

United States
Circuit Court of Appeals

For the Ninth Circuit. 12

J. B. CASSERLY,

Plaintiff in Error,

vs.

REY B. WHEELER,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the Southern Division of the
United States District Court of the
Northern District of California,
Second Division.

FILED
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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Answer	4
Assignment of Error	101
Bill of Exceptions	14
Bond on Appeal to U. S. Circuit Court of Appeals	109
Certificate of Clerk U. S. District Court to Transcript of Record	113
Charge to the Jury	91
Citation on Writ of Error	116
Complaint for Damages for False Imprisonment	1
Judgment on Verdict	11
Names and Addresses of Attorneys of Record . .	1
Order Allowing Writ of Error	107
Order Extending Time to and Including September 1, 1921, to File Record and Docket Cause	118
Order Extending Time to and Including September 26, 1921, to File Record and Docket Cause	119
Order for Withdrawal of Exhibits	111
Petition for Writ of Error	99
Praeceptum for Record on Writ of Error	112
Proposed Instruction Requested by Defendant	97

Index.	Page
Receipt.	111
Return to Writ of Error.....	115
Stipulation Relative to the Settlement of Bill of Exceptions of Defendant, J. B. Casserly.	12
TESTIMONY ON BEHALF OF PLAINTIFF:	
CASSERLY, JOHN B.....	60
MAGUIRE, FRANCIS J.	15
Recalled.	34
WHEELER, RAY B.	15
Cross-examination.	34
Cross-examination.	35
Redirect Examination.	56
Recross-examination.	58
Redirect Examination.	60
Recalled in Rebuttal	87
Cross-examination.	88
Redirect Examination.	90
Recross-examination.	90
TESTIMONY ON BEHALF OF DEFENDANT:	
BAUM, BERTHA J.	84
Cross-examination.	84
Redirect Examination.	85
Recross-examination.	85
BAUM, CHARLES A.	82
Cross-examination.	83
CASSERLY, JOHN B.	62
Recalled.	76
Cross-examination.	78

Index.

Page

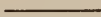
TESTIMONY ON BEHALF OF DEFEND-
ANT—Continued:

CURTIN, WILLIAM L.	79
Cross-examination.	81
DOLLY, H. H.	63
Cross-examination.	67
Redirect Examination.	69
NOBLE, R. B.	71
Cross-examination.	72
REIDFORD, R. R.	86
Cross-examination	87
SMITH, GERTRUDE R.	74
TOBIN, THOMAS L.	70
Cross-examination.	70
Verdict.	10
Writ of Error.	114

Names and Addresses of Attorneys of Record.

Messrs. DEVOTO, RICHARDSON & DEVOTO,
Foxcroft Bldg., San Francisco,
Attorneys for Plaintiff.

F. M. SILVA, United States Attorney, and E. M.
LEONARD, Assistant United States Attorney,
San Francisco,
Attorneys for Defendant.



In the Superior Court of the State of California,
in and for the County of San Francisco.

REY B. WHEELER,

Plaintiff,

vs.

J. B. CASSERLY, JOHN DOE, RICHARD DOE,
JOHN ROE, and RICHARD ROE,
Defendants.

Complaint for Damages for False Imprisonment.

Now comes the above-named plaintiff, and for
cause of action against above-named defendants
alleges:

I.

That on the 18th day of September, 1918, at San
Francisco, in the County of San Francisco, State
of California, said defendants, by the use of force
and violence, arrested and restrained this plaintiff
of his liberty, and by said force and violence then
and there compelled said plaintiff to go with them
to the City Prison in the City and County of San
Francisco, State of California, and at said prison,

caused said plaintiff to be detained, imprisoned and restrained of his liberty for a space of twenty-two (22) hours, without warrant of arrest, without reasonable or any cause of believing that said plaintiff had committed any crime, and without right or authority so to do, and without any charge being lodged against said plaintiff, and against the will of said plaintiff.

II.

That in so doing, defendants acted maliciously, wilfully and with intent to oppress said plaintiff, and in so doing did [1*] oppress said plaintiff.

III.

That by reason of such imprisonment and restraint of his liberty, as aforesaid, said plaintiff was injured in his good name and reputation, and subjected to shame, disgrace, and humiliation before the citizens of said City and County of San Francisco, State of California, and among his friends and acquaintances, and suffered greatly in body and mind by reason of the shame, disgrace and humiliation of said arrest and imprisonment, as aforesaid.

IV.

The plaintiff does not know the names of defendants sued herein by the fictitious names of John Doe, Richard Doe, John Roe and Richard Roe, and prays that when their true names are ascertained, he be permitted to amend his complaint accordingly.

V.

That by reason of the premises, plaintiff has been

*Page-number appearing at foot of page of original certified Transcript of Record.

damaged in the sum of Ten Thousand (\$10,000) Dollars.

WHEREFORE, said plaintiff prays judgment against said defendants for the sum of Ten Thousand (\$10,000) Dollars, and for costs of suit incurred herein.

DEVOTO, RICHARDSON & DEVOTO,
Attorneys for Plaintiff. [2]

State of California,
City and County of San Francisco,—ss.

Rey B. Wheeler, being first duly sworn, deposes and says: That he is the plaintiff in the above-entitled action; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge except as to the matters which are therein stated on his information or belief, and as to those matters, that he believes it to be true.

REY B. WHEELER.

Subscribed and sworn to before me this 11th day of September, 1919.

[Seal] A. J. NAGLE,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Sept. 11, 1919. H. I. Mulcrevy, Clerk. W. R. Castagnetto, Deputy Clerk.
Assigned to Department No. 5, Sept. 12, 1919.

GEO. E. CROTHERS,
Presiding Judge.

[Endorsed]: No. 16,317. In the District Court of the United States in the Southern Division of the

Northern District of California, Second Division.
Rey B. Wheeler vs. J. B. Casserly et al. Transcript
on Removal to Federal Court. Filed Dec. 19, 1919.
W. B. Maling, Clerk. By J. A. Schaertzer, Deputy
Clerk. [3]

In the Southern Division of the United States Dis-
trict Court for the Northern District of Cali-
fornia, Second Division.

No. 16,317.

REY B. WHEELER,

Plaintiff,

vs.

J. B. CASSERLY, JOHN DOE, RICHARD DOE,
JOHN ROE, and RICHARD ROE,

Defendants.

Answer.

Now comes J. B. Casserly, one of the defendants
above named, and answering plaintiff's complaint
on file herein, admits, denies and alleges as follows:

I.

Alleges that at all the times mentioned in said
complaint the said defendant was regularly ap-
pointed, qualified and acting officer of the United
States of America, to wit, a member of Local Board
No. 1 of the City and County of San Francisco,
State of California, and as such said defendant had
in charge the enforcement of the Selective Service
Act of the United States of America, and as a mem-
ber of said board was charged with the duty of in-

investigating violations of the laws of the United States.

II.

Denies that on the 18th day of September, 1918, or at any other time, or at all, at San Francisco, in the County of San Francisco, State of California, or at any other place or places said defendant by the use of force and violence, or by the use of force or violence or in any other manner or at all, arrested and restrained or arrested or restrained plaintiff of his liberty, or at all, [4] and denies that by said force and violence or said force or violence or any other manner or at all, then and there, or at all, compelled plaintiff to go with him to the City Prison in the City and County of San Francisco, State of California, or to any other place, and denies that at said prison or at any other place, or at all, defendant caused plaintiff to be detained, imprisoned and restrained, or imprisoned, or restrained of his liberty, or at all, for a space of twenty-two (22) hours, or from any other time, or at all, without warrant of arrest or otherwise, or at all, or without reasonable or any cause of believing said plaintiff had committed any crime or otherwise or at all, and denies that said defendant did any of the acts complained of in paragraph 1 of said complaint without right or authority so to do, or without any charge being lodged against said plaintiff or against the will of said plaintiff, or in any other way or at all, deprived plaintiff of his liberty, or detained, or imprisoned or restrained plaintiff of his liberty in any way whatsoever.

III.

Denies that said defendant did, as set forth in said complaint, or at any other time, or in any other manner or at all, act maliciously, wilfully and with intent to oppress said plaintiff, or act maliciously, or wilfully, or with intent to oppress said plaintiff, and denies that defendant did in any way, or at any time or at all, oppress said plaintiff.

IV.

Defendant further answering said complaint and particularly paragraph III thereof, denies that said plaintiff was imprisoned or restrained of his liberty in any [5] manner or at any time or at all by said defendant, and denies that said plaintiff was in any way injured by any act or acts of this defendant, in his good name and reputation or in his good name or reputation or in any other way or at all, and denies that plaintiff was subjected to shame, disgrace and humiliation or was subjected to shame or disgrace or humiliation before the citizens of said City and County of San Francisco, State of California, or among his friends and acquaintances or his friends or acquaintances, or before any other citizens or any other people, or at any other place or at all, by this defendant, and denies that plaintiff suffered greatly or otherwise in body and mind or body or mind by reason of the shame, disgrace or humiliation of said arrest or imprisonment set forth in said complaint or otherwise, and defendant denies that he in any way caused the arrest and imprisonment, or the arrest or imprisonment set forth

in said complaint or any other arrest or imprisonment of the said plaintiff.

V.

Denies that by reason of the matters set forth in said complaint or by reason of any act or acts of this defendant, plaintiff has been damaged in the sum of Ten Thousand Dollars or in any other sum or at all.

And as a further, separate and second defense to said complaint the said defendant, J. B. Casserly alleges:

I.

That at all times mentioned in said complaint the said defendant was a regularly appointed, qualified and acting officer of the United States of America, to wit, a member of Local Board No. 1 of the City and County of San Francisco, [6] State of California, and as such had in charge the enforcement of the provisions of the Selective Service Act of the United States of America (Act of May 8, 1917, 40 Statutes at Large, page 76), and as a member of said board was charged with the duty of investigating violations of the laws of the United States of America.

II.

That at all the times mentioned in said complaint, plaintiff was subject to the provisions of said Selective Service Act and subject to registration thereunder, and subject to the jurisdiction of said Local Board aforesaid.

III.

That on the 18th day of September, 1918, said

Local Board and this defendant, as a member thereof, had been notified by the department of Justice of the United States of America, that said plaintiff was in violation of the provisions of said Selective Service Act, and that if said plaintiff visited the offices of said Local Board, said board was to notify said Department of Justice or the Southern Police Station of the City and County of San Francisco, State of California, which police station was acting in conjunction with said Department of Justice and was under the regulations promulgated by the President charged with the apprehension of violators of the provisions of the said Selective Service Law.

IV.

That on said 18th day of September, 1918, said plaintiff called at the offices of said Local Board in the said City and County of San Francisco, State of California, and was informed by this defendant of the said request made by said Department of Justice to said Local Board concerning him, the said plaintiff; that said defendant requested plaintiff [7] to remain at the said offices of said Local Board while he the said defendant notified said Department of Justice of the presence of said plaintiff at the headquarters of said Local Board, that said plaintiff thereupon voluntarily and of his own will and wish and without the use of force or violence, or the use of any restrain or duress upon the part of said defendant and without the exercise of any malice or oppression upon the part of said defendant, remained at the headquarters of said

Local Board until he was taken in charge by a police officer of said City and County of San Francisco for and in behalf of said Department of Justice; that at said time and place plaintiff remained at said headquarters of said Local Board for a period of not exceeding twenty minutes and during all of the said time was free to act as he pleased, free to go or remain, and well knew that said defendant was notifying the officers of the law of his presence at said headquarters, consented thereunto and at all times acted freely and voluntarily and not under the duress, menace, fraud, undue influence, force, violence, compulsion, malice or oppression of said defendant and the said defendant did not then and there or at any other time or at all, or in any manner or for any period of time, arrest or restrain plaintiff or in any way deprive him of his liberty.

V.

Said defendant denies that by reason of any or all of the acts aforesaid or by reason of any other act or acts of this defendant, plaintiff has been damaged in the sum of Ten Thousand Dollars (\$10,000), or in any other sum or at all.

WHEREFORE, said defendant prays that plaintiff take [8] nothing by reason of his complaint herein, and that said defendant be hence dismissed with judgment for his costs incurred herein.

ANNETTE ABBOTT ADAMS,
United States Attorney,
C. W. THOMAS, Jr.,
Asst. United States Attorney,
Attorneys for said Defendant. [9]

State of California,
City and County of San Francisco,—ss.

J. B. Casserly, being first duly sworn, deposes and says: That he is the defendant in the above-entitled action and that he has read the above and foregoing answer and knows the contents thereof, and that the same is true of his own knowledge except as to those matters therein stated on information or belief, and as to those matters he believes it to be true.

J. B. CASSERLY.

Subscribed and sworn to before me, this 4th day of March, 1920.

[Seal] C. W. TAYLOR,
Deputy Clerk U. S. District Court, Northern District of California.

Due service of the within answer and receipt of copy admitted this 5th day of March, 1920.

DEVOTO, R. & D.
Attorneys for Plaintiff.

[Endorsed]: Filed Mar. 5, 1920. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [10]

(Title of Court and Cause.)

Verdict.

We, the Jury, find in favor of the plaintiff and assess the damages against the defendant in the

sum of Seven Hundred Fifty (\$750.00) Dollars.

THOMAS A. COX,

Foreman.

[Endorsed]: Filed June 17, 1921. Walter B. Maling, Clerk. [11]

In the Southern Division of the United States District Court, in and for the Northern District of California, Second Division.

No. 16,317.

REY B. WHEELER,

Plaintiff,

vs.

J. B. CASSERLY,

Defendant.

Judgment on Verdict.

This cause having come on regularly for trial upon the 16th day of June, 1921, being a day in the March, 1921, term of said court, before the court and a jury of twelve men duly impaneled and sworn to try the issue joined herein; A. S. Devoto, Esq., appearing as attorney for plaintiff and E. M. Leonard and W. H. Tully, Assistant United States Attorneys, appearing on behalf of the defendant; and the trial having been proceeded with on the 17th day of June, in said year and term, and oral and documentary evidence upon behalf of the respective parties having been introduced and closed and the cause, after arguments by the attorneys

and the instructions of the Court, having been submitted to the jury and the jury having subsequently rendered the following verdict which was ordered recorded, namely: "We, the jury, find in favor of the plaintiff and assess the damages against the defendant in the sum of Seven hundred fifty (\$750.00) Dollars. Thomas A. Cox, Foreman," and the Court having ordered that judgment be entered in accordance with said verdict and for costs:

Now, therefore, by virtue of the law and by reason of the premises aforesaid, it is considered by the Court that Rey B. Wheeler, plaintiff, do have and recover of and from J. B. Casserly, Defendant, the sum of Seven Hundred Fifty and no/100 (\$750.00) Dollars, together with his costs herein expended taxed at \$41.55.

Judgment entered June 17, 1921.

WALTER B. MALING,

Clerk. [12]

(Title of Court and Cause.)

Stipulation Relative to the Settlement of Bill of Exceptions of Defendant, J. B. Casserly.

IT IS HEREBY STIPULATED by and between counsel herein that all of plaintiff's proposed amendments to defendant Casserly's proposed bill of exceptions herein, with the exception of plaintiff's proposed amendments numbered 27, 28 and 29, may be and they are hereby allowed, and the parties hereto being unable to agree as to said proposed amendments of plaintiff numbered herein

27, 28 and 29, they are hereby submitted to the above-entitled court for decision, said plaintiff submitting said proposed amendments upon the following authorities:

Rule 10, page 167 of Rules of Practice of the United States Circuit Court of Appeals for the Ninth Circuit.

Wells-Fargo vs. Zimmer, 186 Fed. 130-132.

Hindman vs. First National Bank, 112 Fed. 934.

American Issue Publishing Co. vs. Sloane, 248 Fed. 251, and cases cited.

Atlantic etc. Co. vs. Raulerson 267 Fed. 694.

On behalf of said defendant Casserly, said proposed amendments of plaintiff are submitted for decision by the above-entitled court, Judge Frank Dietrich therein presiding, upon the following authorities. [13]

Edington vs. U. S., 164 U. S. 361, at 364, 41 L. Ed. 467, at 471.

Pritchett vs. Sullivan, 182 Fed. 480, at 483-4.

Felton vs. Newport, 92 Fed. 470, at 473-4.

Bernhardt vs. City & S. Ry. Co., 263 Fed. 1009, at 1016.

DEVOTO, RICHARDSON & DEVOTO,

Attorneys for Plaintiff.

F. M. SILVA,

U. S. Atty.,

E. M. LEONARD,

Asst. U. S. Atty.,

Atty. for Defendant, J. C. Casserly.

Dated: August 17, 1921.

While I doubt the sufficiency of the exceptions to the instructions, it is thought the question is for the Appellate Court rather than the Trial Court.

Sept. 1/21.

DIETRICH,
Judge.

[Endorsed]: Filed Aug. 19, 1921. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [14]

In the Southern Division of the United States District Court for the Northern District of California, Second Division.

Before Hon. FRANK S. DIETRICH, Judge.

RAY B. WHEELER,

Plaintiff,

vs.

J. B. CASSERLY et al.,

Defendants.

Bill of Exceptions.

BE IT REMEMBERED that on the 16th day of June, 1921, the above-entitled cause came on for trial before the above-entitled court and a jury empaneled.

Hon. FRANK S. DIETRICH presiding, the plaintiff appearing by Anthony S. Devoto his counsel, and the defendant appearing by E. M. Leonard, Assistant United States Attorney, and Wilford H.

(Testimony of Francis J. Maguire.)

Tully, Assistant United States Attorney, the following proceedings were had:

Testimony of Francis J. Maguire, for Plaintiff.

FRANCIS J. MAGUIRE, being first duly sworn, testified as follows on behalf of plaintiff:

“I was booking officer at the Southern Police Station during the month of September, 1918, at Fourth and Clara Streets, the City and County of San Francisco, State of California. I have in my possession a copy of the record of the arrest of Ray B. Wheeler. It is in my handwriting. I obtained the data contained on this paper from the booking record at the Southern Police Station. I copied it exactly from the official records at that station. I entered the record originally myself.

“Mr. DEVOTO.—You made this copy yourself?

“A. Yes.

“Q. You made the original entry yourself?

“A. Yes.

“Q. You swear positively now that this is an exact copy of the official record?

“A. Absolutely, yes.

“Q. Mr. Maguire, will you kindly phone to the station and ask to have that book brought here?

“A. Immediately?

“Q. Yes, if you will. A. Yes.” [15]

Testimony of Ray B. Wheeler, in His Own Behalf.

RAY B. WHEELER, being first duly sworn, in his own behalf, testified as follows:

“I am plaintiff in this case. I recall what happened to me on the 18th day of September, 1918,

(Testimony of Ray B. Wheeler.)

in this City and County. I know the defendant, J. B. Casserly. I met him at the Hotel Whitcomb, I am not sure between what streets, at about 1:30 o'clock on the 18th of September, 1918. The other officials of the draft board, who were unknown to me were present. I called at the office of the local draft board at about 1:30 that afternoon for the purpose of obtaining papers from that draft board which would enable me to make a trip to sea, in accordance with the draft laws existing at that time. I had been registered in the City of Seattle. I have the registration card. When I called on Mr. Casserly I had already registered in the draft in Seattle. I had already been classified. I called on Mr. Casserly at 1:30 on that day to obtain permit in accordance with the draft laws, which would enable me to make a trip to sea, in accordance with the position which I held on a steamship, and it being necessary to obtain permission from a local draft board between every trip that we made to sea. For anyone registered to go to sea, it was necessary at that time to obtain individual permission between each trip—on coming in from one trip we had to get permission to go to sea again on the next trip, and I called. I had to obtain that permission from the draft board. My employer, the Pacific Mail Steamship Company, advised me to obtain that permission from local draft board No. 1. I called on Mr. Casserly for that purpose. I was registered in the City of Seattle, and for people registered in another town

(Testimony of Ray B. Wheeler.)

and now being resident of San Francisco, as I was at that time, having transferred my residence, it was necessary to obtain that permission, which I was seeking through a draft board in San Francisco, which, for me, was Draft Board No. 1 in the Hotel Whitcomb. I called on this board and this permission was obtained by this draft board from the Seattle Board by wire, and I called to obtain that permission there—the draft board notified me that they would wire to Seattle—”

“I took up this question of permission with J. B. Casserly, a member of the draft board. I said to Mr. Casserly, “I would like to get permission to go to sea in accordance with the provisions of the draft board, and would like to have him wire to the Board at Seattle, where I was registered, to obtain that permission for me, in conformity with the regulations at that time.” Mr. Casserly looked over my draft papers, these papers—I showed him these papers at that time. The papers were introduced in evidence and marked ‘Plaintiff’s Exhibit 1.’ That was about 1:30, September 18, 1918. Mr. Casserly requested me to show him these cards, that is, the registration cards and the classification card, and I showed them to him. He said that he would go ahead and wire to Seattle and obtain that permission for me, and for me to return later that afternoon to get the papers which I had gone there to obtain. Nothing further was said by either one of us at that time.

“I returned at about 5:30, between 5 and 5:30

(Testimony of Ray B. Wheeler.)

that afternoon of the same day. I called immediately on Mr. Casserly and [16] requested of Mr. Casserly the answer from the Seattle Board and the papers for which I had called earlier in the day, and Mr. Casserly replied to me, 'Take a seat in this adjoining room, a small anteroom of the draft board, for a few minutes, have a seat in this room for a few minutes, and I will look the matter up.' There was no one else in that room. I waited in that room about ten minutes. After waiting about ten minutes, I became rather impatient as to what was going to take place, as to what was holding up the transaction, what was delaying the transaction, and I got up out of the chair I was sitting in and advanced toward the door of this anteroom, and was going to step outside to make inquiry as to why the transaction was being delayed, and I was met at the door by Mr. Casserly, and his words to me were exactly, 'I will have to detain you here'—Mr. Casserly said to me at that time, 'Mr. Wheeler, I will have to detain you here.' I was taken totally by surprise and I hardly knew what to think at the time, but I made some inquiries; I said, 'What does this pertain to, what is this all about, what do you mean?' His reply was, 'I can't give you any information on this subject. I will have to detain you here.' I persisted in my inquiry, and his reply was, 'This is a Federal case, you will have to take the matters up further with the authorities when they arrive.' Upon arrival at that point, I continued to inquire, and I

(Testimony of Ray B. Wheeler.)

asked Mr. Casserly if I would have a chance to bail myself out after the authorities had taken possession of me, and I was told that he could not—Mr. Casserly replied to me, ‘I cannot tell you as to that, you will have to take that up with the officers when they arrive.’ I questioned Mr. Casserly as to what I was charged with, what accusation was against me, what he was detaining me for. Mr. Casserly’s reply to me was, ‘I cannot tell you anything about that; you will have to take that up with the officers when they arrive.’ I asked Mr. Casserly if I might communicate with my folks, with an attorney, with my friends, and Mr. Casserly’s reply to me was, ‘You will have to take that up with the authorities when they arrive.’

“Mr. Casserly or no one there asked me any questions at all as to who I was, or what I was doing there, or where I was working, or if I had committed any crime, or anything of that nature at all. I was wearing a fraternity pin at the time. I have that fraternity pin; it might have identified me. I had papers in my pockets which might have identified me. Very likely, Mr. Casserly saw that fraternity pin as a person would see anything like that.

“The COURT.—Where were you wearing it?

“A. On my vest, just about like that; at the time I had just completed a course at the University of California; in December, 1916, I completed my course, and the war coming on, I left the University and went to sea in 1917. I was a junior in the

(Testimony of Ray B. Wheeler.)

University of California. On my person I had also the draft papers; these two draft papers. I also had in my possession at that time a waterfront pass, containing my photograph, and my name. This is the waterfront pass. I also had in my possession at that time a seamen's passport. This is not the passport which I had at that time, but that is a passport containing substantially the same information. That was a passport which was necessary for us to trade in at a later date in order to obtain this form of passport; early in the year we had one form, and later in the year another form of passport. I exchanged one for the other. This is the one I exchanged for the one that I had in my possession at that [17] time, and this one has substantially the same information as the one I had at that time, that was in my possession at that time. I had shown earlier in the day my registration card to Mr. Casserly. I had not shown him these things, but had them in my possession, and which he could have seen for himself if he had inquired. He did not ask me for any means of identification. He did not ask me a thing about my relatives, what I was doing, or if I had any friends living in San Francisco who could identify me; he did not ask me where I was employed; he made absolutely no inquiry, but simply said, 'I will have to detain you here.' I had informed him upon my first visit by whom I was sent to him to obtain this permission, by my employer, the Pacific Mail Steamship

(Testimony of Ray B. Wheeler.)

Company, and at that time I was employed by the Pacific Mail Steamship Company plying between San Francisco and the Orient, Hong Kong, Shanghai and Manila. I had been in the employ of the Pacific Mail Steamship Company prior to that time about one year; yes—over eleven months, to be exact, as storekeeper on the steamship ‘Ecuador.’

“Mr. DEVOTO.—I introduce these in evidence, and ask that they be marked ‘Plaintiffs’ Exhibit 2.’

“Mr. LEONARD.—They are objected to as immaterial, irrelevant and incompetent; they are not connected with this case, not within the issues, and in no way connected with it.

“The COURT.—Overruled.

“Mr. LEONARD.—Exception.

“Mr. DEVOTO.—Q. Mr. Wheeler, was anything else said by you to Mr. Casserly, or by Mr. Casserly to you, upon your second visit, in addition to what you have just related?

“A. Mr. Casserly said nothing to me in addition to the statement, ‘I will have to detain you here’; I attempted to question him upon these three subjects, could I bail myself out; what am I charged with; can I communicate with my folks and an attorney; and he gave me absolutely no satisfaction, made no inquiries as to my identity; I was unable to find out on what charge I was being held, or if I should be able to bail myself out; and I was not allowed to communicate with anyone, who could give me any assistance, whatsoever.

(Testimony of Ray B. Wheeler.)

“Q. You had a watch with you at the time, did you not?

“A. I had, and a gold knife.

“Q. Would those things identify you?

“A. They would assist in identification; my knife had my initials engraved on it.

“Q. Your knife had your initials engraved on it?

“A. Yes, on the handle of the knife; I had that identical knife with me at the time I was detained by Mr. Casserly.

“Mr. DEVOTO.—I offer this knife in evidence and ask that it be marked ‘Plaintiffs’ Exhibit 3.

“Mr. LEONARD.—Objected to on the same grounds.

“The COURT.—Overruled.

“Mr. LEONARD.—Exception.

“Mr. DEVOTO.—Q. Did you have any other means of identification at the time, Mr. Wheeler?

“A. I certainly did; I could have identified myself positively in a very few minutes by communicating [18] with my employer, or by communicating with friends of mine in San Francisco, or by communicating with folks of mine, my sister being at that time a teacher in Alameda High School, and my mother and sister being residents of the City of Alameda. I had in my possession at that time something over thirty dollars.

“At the Hotel Whitcomb, Mr. Casserly communicated with the police officers, and just a few minutes after my being detained there—I was detained there about ten or fifteen minutes on the

(Testimony of Ray B. Wheeler.)

expiration of which two police officers arrived and placed me under arrest. When these two police officers arrived, Mr. Casserly said to the police officers, 'this is the man'—inferring I was the man—'for whom I sent for you; this is the man I sent for you to arrest.' He used that language substantially, he said, 'This is the man.' The policeman only put me under arrest, and said 'Come along with me,' or something in substance to that effect, 'We will take you down to the station,' something substantially to that effect. The officers took me by the arm and proceeded to take me out to the patrol-wagon and take me down to the station, near the corner of Fourth and Folsom Streets, the Southern Station, I believe it is called. I had a conversation with the police officers immediately upon the arrival of the police officers, I asked them on what charge I was being taken—I asked the policeman in Mr. Casserly's presence inside the Hotel Whitcomb, upon what charge I was being arrested, on what charge I was being taken, and any information on the subject was refused me, and I persisted in my inquiry on that point, and they said, 'We can tell you nothing about it; you will have to make further inquiry when we get down to the station'; I said, 'Can I have a chance to bail myself out? I have \$30 in my possession, and would like a chance to bail myself out'; any information to that was absolutely refused me; they told me they could give me no information on that subject, at all—I would have to make inquiries further down the line. I asked if

(Testimony of Ray B. Wheeler.)

I might have an opportunity to communicate with my folks, and with an attorney while I was at the Hotel Whitcomb, and this privilege was specifically denied me at that time, and they told me that as to further communication with my folks, when I was taken to the Southern Station, I should make inquiry there.

“They accompanied me then, these two officers, to the Southern Police Station, where I was booked on a charge. In company with the other prisoners I was led to the book sergeant, and he inquired as to my name, and different questions of that nature and he entered them of record. I saw Sergeant Maguire on the stand this morning, and have a faint recollection that he is the identical officer that made these entries. I was not informed by the officers what the charge was against me. I was at the Southern Police Station after I was booked about twenty minutes or half an hour. I was searched; they went through my clothes and took away everything that I had except my identification papers, which consisted of a seaman’s passport and waterfront pass, and two registration cards; those were left in my possession, but my knife, and watch and fraternity pin, and all of those other things, were taken away from me at that time, including something over \$30 in cash. All of these articles introduced here were taken away from me except the registration cards which you have, and the seaman’s passport; those were left in my possession at that time—this the seaman’s passport, the waterfront

(Testimony of Ray B. Wheeler.)

pass and the two registration cards. The knife and watch, and pin, and money were taken away from me, but these cards continued in my possession as an identification on the rest of my trip. I was in custody at the Southern Police Station of these two [19] officers and the other officers of the Southern Police Station—I was their prisoner. I was at the Southern Police Station about twenty minutes or half an hour. Then I questioned these officers, including the booking sergeant at this Southern Police Station, I said, 'What am I charged with?' And they refused to state there was any charge against me; I tried to hammer that home, I said, 'I understand that you cannot arrest a man in the United States without placing some charge against him, and I would like to know what you are arresting me for, what I am put in jail for; I would like to know what charge is against me.' They said, 'Well, you can't find out anything of that kind here,' or words substantially to that effect; they gave me absolutely no satisfaction in that regard. I questioned them as to whether I would have an opportunity to bail myself out, or arrange to get bail, and this privilege was distinctly denied me.

"I was taken from the Southern Police Station down to the jail on Washington and Kearny Streets. Taken down there in the patrol-wagon, with about seven or eight bums and vagrants; they had a little gang fight on the way down. When I got down to the city prison, I again made inquiries as to the charge against me. I inquired if I would have an

(Testimony of Ray B. Wheeler.)

opportunity to communicate with an attorney, and with my folks, and my friends, and this privilege was distinctly denied me; I inquired if I would have an opportunity to bail myself out, or to arrange to get bail, to obtain my release that evening, and they said positively not, that I would have to stay that night in the city prison, that I would have no opportunity to bail myself out, in spite of the fact that I had these cards upon my person absolutely identifying myself, and in spite of the fact that I could have identified myself through my employer or my people living in Alameda, or my friends living in San Francisco; I inquired what charge they were preferring against me, and why I would have to stay in the city prison—

“Mr. LEONARD.—This line of testimony is objected to as argumentative, and not in response to any question.

“Mr. DEVOTO.—Q. Where were you placed when you arrived at the city prison?

“A. In a cell in the city prison. At first we were allowed to roam through a sort of corridor connecting all the cells, but very early in the evening, I think it was about seven or eight o'clock, as is customary, they lock a group of prisoners up in individual cells, and we no longer had the privilege of roaming around the corridor, and I spent the remaining part of the night in the cell.

“Q. With whom?

“A. In that same cell with me there was one man somewhat intoxicated, and another man who, upon

(Testimony of Ray B. Wheeler.)

conversation with him, told me that he had been picked up for suspected draft evasion; that was early in the evening; about two o'clock that morning, they opened the door of the cell and threw two Chinamen in the same cell with me. There were five persons in that cell. I certainly could not sleep that night, nor for a good many nights after that; the condition of the cell was crowded, and the accommodations we had for sleeping were in a filthy condition, and the worry on my mind, as to what my folks might think as to where I was, and all that had transpired, why I had been arrested, as to when I would get out, and the question as to whether I would be able next morning to get to work, as my ship was going to sail Saturday—I did not know whether I would get my job or not—

“Mr. LEONARD.—We object to this as argumentative. [20]

“Mr. DEVOTO.—It goes to the witness' humiliation and suffering.

“Mr. LEONARD.—It is not responsive to any question.

“The COURT.—No, it is not responsive to the question. You may ask him other questions. I will let the answer stand as far as it goes.

“Mr. DEVOTO.—Q. Mr. Wheeler, how long were you kept in this cell with these two Chinamen and this person whom you say was half drunk, and the so-called draft evader?

“A. Until about six o'clock next morning, when the cells were opened, and we were allowed to go

(Testimony of Ray B. Wheeler.)

into the corridor. During the time that I was in that cell I did not sleep at all. I never had been arrested before or after in my life, for any crime of any character; I have never been in the custody of a police officer, never before in my life. I was not an Army deserter; I was regularly registered with the draft board. At six o'clock that morning the cell I was in was opened, and we were allowed to roam in the corridor, and a so-called breakfast was served about half an hour later; that breakfast consisted of cornmeal mush without milk or sugar, bread without any butter, and coffee without any sugar, and I was so sickened from my experience of the night before, and lack of sleep, and worry over the situation that I was in, that I was absolutely unable to eat a bite that morning; and that night, when we arrived at the city prison, they had taken us to the prison without letting us have any dinner or refreshment, it being customary to serve dinner at the city prison at about five o'clock in the afternoon; upon my arriving there at a later time I was totally without anything to eat that entire evening and the next morning, and was in such a condition that I was absolutely unable to eat a bite, like any other reasonable man would be if he had been in a situation like I had been at that time.

“I was taken out of the city prison at about 11:30 that morning, by officers of the Federal Department of Justice, who called at the prison, and summoned me to come along with them, in their custody. They said, ‘Come along with me, Wheeler; we will take

(Testimony of Ray B. Wheeler.)

you up to the Federal Department of Justice, and your case will be investigated; you will be put on trial,' something like that. I see one of the gentlemen who talked to me at that time in the audience here; the light complexioned gentleman, Mr. Noble. I think I can probably state who the other gentleman was; there is another gentleman, a heavier set gentleman. He took me to the Flood Building, to the offices of the Department of Justice. I was put through a course of questioning. I inquired of them what the charge was against me. They refused to state that there were any charges against me; I inquired, 'What are you trying me for, what am I being questioned for?' I made the same inquiry as I did of Mr. Casserly and the police officers. They gave me no satisfaction at all. I asked if I might have an opportunity to communicate with my folks, or an attorney to represent me, or with my employer; my ship was going to sail Saturday, that was Thursday, and I wanted to communicate with my employer and tell him what the situation was that I was in, but an opportunity to communicate with any of these officials was refused me, or with any of my friends. I remained in their possession until about four o'clock that afternoon, three-thirty or four o'clock. From 1:30 to 4 o'clock I was in their custody.

"Mr. DEVOTO.—During that time, were you subjected to any grueling? [21]

"A. Yes, I was by these officials of the Department of Justice.

(Testimony of Ray B. Wheeler.)

“Q. Were any third degree methods resorted to by these officers during that period of time?

“The COURT.—You need not answer that question. You will have to ask him what occurred.

“Mr. DEVOTO.—I will follow your Honor’s suggestion. Q. I wish you would kindly describe to the jury and to the court what methods were resorted to by these officers in the Flood Building while you were in their custody?

“A. One of the first questions that I was subjected to—

“Mr. LEONARD.—I think the witness should tell us who was present, and just how this proceeding started, and give more or less of the conversation that took place.

“Mr. DEVOTO.—Q. Was this in a room in the Flood Building? A. Yes.

“Q. Who was present besides yourself?

“A. This gentleman from the Federal Department of Justice, Mr. Noble, and one other official of the Department of Justice, whom I do not see here, a heavier set man. There were three of us; no one else at that time from 11:30 till about 2:30, but about 2:30 I was—between 11:30—it took them from about 11:30 to 12 to escort me from the police station down to the Department of Justice, in the Flood Building. Then from 12 to 2 they would question me. When I say ‘they,’ I mean the Department of Justice officials, including this man. I mean just this gentleman and the other gentleman. When I say ‘they,’ I refer to those two particular gentlemen.

(Testimony of Francis J. Maguire.)

Between 12 and 2 o'clock they would question me for several minutes. During this period from 12 till about 2:30 I was questioned by these two gentlemen at intervals; the questioning took perhaps 20 minutes, or so, upon the expiration of which they would retire and go over their notes on the subject, and then would come back and go at me again. Would you like the nature of some of these questions?

“Q. Yes, I wish you would tell us.

“The COURT.—Do you think that is material?

“Mr. DEVOTO.—Yes, your Honor.

“The COURT.—Very briefly, then.

“A. One of the questions was, ‘Where did you get into your head that your name was Wheeler,’ and questions of that kind. Another question was, ‘You have been getting by with this stuff a long time, haven’t you?’ Questions of that nature. ‘Did you ever know a fellow by the name of ‘Nolan’—is your name ‘Nolan.’ Questions in that tone of voice. ‘Were you ever an employee of the Pacific Gas & Electric Company?’ I think I replied that I never had been, I never had any connection with the Pacific Gas & Electric Company.

“The COURT.—After two o'clock, what occurred?

“A. In reply to one of my answers they said, ‘Let us take him down to the Pacific Gas & Electric.’

“Mr. DEVOTO.—Q. Who said that, Mr. Noble, or the other gentleman?

“A. I could not say positively which one of them did. They said take me down, and they took me

(Testimony of Ray B. Wheeler.)

down to the Pacific Gas & Electric Company, on Sutter Street, near Powell, I believe it is; they [22] brought me up before an official of the Pacific Gas & Electric Company, apparently for the purpose of identification, and to see if—

“The COURT.—Q. Just state what was done.

“Mr. DEVOTO.—Q. Just state what was done.

“A. They brought me into the presence of this official, and they said, ‘Is this your man?’ And the official of the Pacific Gas & Electric Company looked at me and said, ‘No, he is not the man.’ That was about 2:30 or 3 o’clock, between 2:30 and 3. That was the day following my arrest. I was reconducted to the Flood Building, to the Department of Justice, where additional questions were asked of me. I was escorted to the Pacific Gas & Electric Company by this gentleman and the other gentleman I have reference to, the same gentleman that took me from the City Prison to the Flood Building earlier that morning; they took me down Powell Street to the Pacific Gas & Electric Company. I walked between them and in their custody. Then I returned to the Flood Building. They asked me to give up any papers I had in my possession, and I gave them the papers which were my two draft papers, my waterfront pass, and my seaman’s passport; I turned these papers over to these gentlemen for their inspection. They looked over the papers, and hemmed and hawed about the circumstance. I was released at about 3:30 or 4 o’clock—between 3:30 and 4:30 that afternoon. They made absolutely no apology for having detained me.

(Testimony of Ray B. Wheeler.)

“The COURT.—What was said, the conversation?

“A. They just said, ‘You can go now; we are through with you.’ Nothing more was said.

“Q. What effect, Mr. Wheeler, has your experience had on you, that is, your imprisonment and incarceration for 22 hours?

“Mr. LEONARD.—That is objected to as immaterial, irrelevant and incompetent, and furthermore, it is calling for a conclusion.

“The COURT.—Do you mean physically?

“Mr. DEVOTO.—Yes, mentally and physically. I think it is a proper question in such a case.

“The COURT.—I think you had better confine it to a question that I can rule upon more easily.

“Mr. DEVOTO.—Q. Mr. Wheeler, what result, physically, did this imprisonment and incarceration for 22 hours have upon you?

“Mr. LEONARD.—That is objected to on the grounds stated, and on the further ground that it has reference to something subsequent to the arrest charged here by Mr. Casserly.

“Mr. DEVOTO.—It was all part of the same transaction.

“The COURT.—I am not sure that the witness is competent to answer the question as to what effect it has had on him physically. He may state what his physical condition was afterwards.

“Mr. DEVOTO.—I am trying to get at his suffering mentally and physically.

“The COURT.—You have gone into his mental suffering, that is, the effect that it had upon his

(Testimony of Ray B. Wheeler.)

mental condition. Now, do you desire to inquire as to his physical condition?

“Mr. DEVOTO.—Yes. [23]

“Mr. LEONARD.—I object to it.

“The COURT.—You may ask what his physical condition was afterwards, and perhaps it will be for the jury to say whether or not, in the light of all the circumstances, such condition was due to his arrest.

“Mr. DEVOTO.—Q. Mr. Wheeler, was your health good or bad prior to this arrest?

“A. My health was good prior to the arrest.

Q. Was it after the arrest?

“A. I was a nervous wreck for days after that arrest.

“Mr. DEVOTO.—That is all.

Cross-examination.

“Mr. LEONARD.—Q. What is your age, Mr. Wheeler? A. 26.

“Q. You say you were inducted into the service?

**Testimony of Francis J. Maguire, for Plaintiff
(Recalled).**

FRANCIS J. MAGUIRE, being recalled as a witness, the following proceedings were had:

“Mr. DEVOTO.—Your Honor, this officer, I do not like to keep long, because he has had no sleep for the last 12 hours. I would like to withdraw this witness, now.

“Mr. LEONARD.—We will admit the book in evidence on the testimony of the present witness.

(Testimony of Francis J. Maguire.)

“Mr. DEVOTO.—I would like to read this into the record, so that it may be returned to the station. It is on page 244 of the Record of Arrests of the Southern Police Station of the City and County of San Francisco.

“The COURT.—Of what date?

“Mr. DEVOTO.—Of September 18, 1918, and it contains the following from line 35 thereof: Name, Ray B. Wheeler. Age, 23; Nativity, California. Occupation, Clerk. Color, White. Charge, En Route to U. S. Marshal. By whom arrested, Citizen J. B. Casserly. Remarks: Time 6:25. Discharged, September 18, 6:50 P. M. Property or marks, 2 knives and bundle, contents \$33.’ Officer Maguire, can you tell me what this initial means?

“Mr. MAGUIRE.—That is an abbreviation for open face white metal watch, white metal chain.

“Mr. DEVOTO.—‘Transferred from Southern Station to City Prison.’

“The COURT.—What is meant by ‘Discharged’?

“Mr. MAGUIRE.—From that station to the City Prison.

**Testimony of Ray B. Wheeler, in His Own Behalf
(Cross-examination).**

“The cross-examination of plaintiff by Mr. Leonard then continued.

“Mr. LEONARD.—Q. Mr. Wheeler, you were registered for the draft, were you?

“A. In Seattle, 1917, about June 5, I believe it was. I am not certain whether I filed a question-

(Testimony of Ray B. Wheeler.)

naire in Seattle, or not; it seems to me there were some papers of that sort to be filed in Seattle, but I distinctly recall that upon my moving to San Francisco in the fall of 1917 we had a questionnaire to make out which I filed, possibly in the fall of that year or in the spring of the next year; at any rate, during the regular course of time for filing [24] questionnaires. It was the latter part of 1917, or the first part of 1918. My occupation at the time that I registered was a salesman in the City of Seattle, in a shoe-store; prior to going into the shoe-store I was a student at the University of California; I worked in a shoe-store more or less temporarily while I was in Seattle. Prior to going to the University of California I did High School work. I did serve [25] at some employment during the holidays when at school or at the University between semesters; to a certain extent in the shoe business; I sold shoes after school.

“Q. When you went to the draft board on Market street it was for the purpose of getting a permit for a passport under deferred classification of a mariner, was it not?

“A. No, it was not.

“Q. It was not?

“A. No. Draft Board No. 1, do you refer to?

“Q. Yes. A. No, it was not.

“Q. What did you go for then?

“A. I had already been given a deferred classification. I went there to obtain a temporary permit to go to sea.

(Testimony of Ray B. Wheeler.)

“Q. That was my question, whether or not you went there for a permit for a passport under a deferred classification. That is what you did, was it not?

“A. No; I already had a passport, or I would not have called to get a permit for a passport; my passport had been issued here earlier in the year.

“Q. With reference to sending a telegram, you have stated on your direct examination that you asked Mr. Casserly to send a telegram to the Seattle Board for you, did you not?

“A. That was the regular course of procedure necessary to get that information.

“Q. But, as I understood you, you stated that you asked him to do that?

“A. I did state that.

“Q. Wouldn't you be mistaken about that?

“A. In what respect?

“Q. That you asked him to send a telegram?

“A. No, I did ask him to send a telegram.

“Q. You did ask him to send a telegram?

“A. Yes.

“Q. What did he say?

“A. That he would; that he would send the telegram and go through the necessary preparations for me to obtain this permit which I was seeking.

“Q. Now, couldn't you be mistaken about that?

“A. No; the events of that day are just as plain in my mind as anything possibly could be.

“The COURT.—That is the day you went to the draft board?

(Testimony of Ray B. Wheeler.)

“A. Yes, the day of my arrest.

“Mr. LEONARD.—Q. On September 18, 1918, that was it?

“A. Yes.

“The COURT.—You mean the day of your arrest?

“A. Yes, that is what I referred to.

“Mr. LEONARD.—Q. I would like you to relate to the jury, as near as you can, what took place that day. I want you to go over, if you can, in chronological order, when you got up that morning, where you went, and what you did, step by step, until you went to the draft board and had your first conversation with Mr. Casserly.

“A. I called up my employers—I reported for work about 8 o’clock that morning.

“Q. Where?

“A. At the dock of the Pacific Mail Steamship Company, Pier 42 or 44, along about there, where the steamship I was employed on was docked. [26]

“Q. What was the name of the ship, do you recall?

“A. The steamship ‘Equador’; at about eight o’clock that morning I went through the regular routine of my employment, which included checking materials and cargo on to the ship, to enable it to make another journey to sea—I went through that routine work that morning until about ten or eleven o’clock, when an official of the Pacific Mail Steamship Company notified myself and other employees of the ship to report to the local draft board No. 1,

(Testimony of Ray B. Wheeler.)

or to such other draft board as we should be registered at—I having been registered from No. 1—to report to that board for a permit, which it was necessary for us to get before we could sign the ship's articles to go to sea Saturday of that week. Upon this information and direction from the Pacific Mail Steamship Company official, I went down town and had lunch, and went to the Hotel Whitcomb, in accordance with the request of my employer, the Pacific Mail Steamship Company, and requested at the office of the local board from Mr. Casserly that he obtain such a permit.

“Q. Do you recall the name of the steamship official that you had this conversation with?

“A. Yes.

“Q. What is his name?

“A. W. E. Bunker. He is at the present time, I believe, employed down about Pier 37; he is no longer with the Pacific Mail Steamship Company.

“Q. You would be positive, then, that the telegram, if any, which was sent, was sent by Mr. Casserly? A. Yes.

“Q. At the draft board office? A. Yes.

“The COURT.—Q. Do you know if a telegram was sent?

“Mr. DEVOTO.—Q. Do you know whether Mr. Casserly sent a telegram to Seattle?

“The COURT.—Do you know of your own knowledge, did you see him send it?

“A. I did not see him send it; I gave directions to Mr. Casserly.

(Testimony of Ray B. Wheeler.)

“Q. That is what you mean, you gave directions, to send the telegram, but whether he sent the telegram you don't know?

“A. I gave him directions and he replied he would, and after I had been arrested I called him up for the permit which I had been after two days before.

“Mr. LEONARD.—Q. You are quite positive you did not send the telegram? You say you are very clear as to the things that transpired that day.

“The COURT.—Are you positive that you, yourself, did not send the telegram, rather than Mr. Casserly?

“A. I will state that it might have been possible that Mr. Casserly notified me to send a telegram to Seattle requesting the Seattle Board to grant the San Francisco Board No. 1, through Mr. Casserly, permission for me to go to sea; if such was the case I would have sent such a telegram myself, requesting the Seattle Board not to reply to me but to reply to Local Board No. 1.

“Mr. LEONARD.—Q. Then you are not positive in your statements, as you have stated before you were, that whatever telegraphing was done was done by the office of the draft board, and that you went there to inquire about this matter?

“A. I would say that I am [27] positive it was done by directions of the draft board; I am not certain as to whether Mr. Casserly sent the telegram, or whether he directed me to send it.

“Q. We want what transpired that day; we wish

(Testimony of Ray B. Wheeler.)

the jury to know how well you know what took place that day. If you sent the telegram, we expect that you would be able to tell us about it. Can you tell us anything more about sending it?

“MR. DEVOTO.—I do not see the materiality of that testimony.

“MR. LEONARD.—Q. Can you tell us where you sent it from?

“A. I could only say that the telegram was sent by the direction of the board, through Mr. Casserly, by Mr. Casserly’s direction; as to whether he executed that direction, or whether that was executed through me I would not positively state.

“Q. If you went into a different telegraph office, you would remember that, wouldn’t you? You would, would you not? You say you remember clearly as to the matters that happened that day?

“A. Not necessarily. because that was in an *inerim* between my first visit and my second visit.

“Q. As a matter of fact, you sent a telegram yourself, didn’t you, from the Powell Street branch office.

“MR. DEVOTO.—I object to the question on the ground the witness has already answered he is not positive whether he sent it or Mr. Casserly sent it.

“A. Yes, I did.

“MR. LEONARD.—Q. You are positive of that now, are you?

“A. I am not positive of it now, but the thing that causes me to change my mind from what I said a few minutes ago when you first questioned

(Testimony of Ray B. Wheeler.)

me on the subject is I have a slight recollection of Mr. Casserly having given me directions to send the telegram, rather than to send the telegram himself; I have a slight recollection of having called at that Powell Street office and sending such a telegram, although I am not positive of that. I am positive that that telegram directed the Seattle Board to advise the local board to grant me this permission.

“Q. When did this telegram advising the local board arrive, do you know?

“A. No I do not.

“Q. You are positive, you say, there was such a telegram. How do you know there was?

“The COURT.—What telegram?

“Mr. LEONARD.—The return telegram, in regard to the inquiry for the permit.

“The COURT.—I did not understand him to say he was positive.

“Q. Are you positive there was a return telegram or reply to that?

“A. No, except in so far as the permission was granted subsequently to me—that a permit was granted me subsequently, it would be natural to assume that a reply had been received from them.

“Mr. LEONARD.—Q. When did you get the permit?

“A. I again called the day after my release at the office of Draft Board No. 1 and from Mr. Casserly obtained a permit. [28]

“A JUROR.—You asked the witness whether he sent a telegram; now, there are different ways of

(Testimony of Ray B. Wheeler.)

sending telegrams; do you mean whether he wrote it out, or Mr. Casserly wrote it out, or just what do you mean?

“Mr. LEONARD.—I will state to the Court what I want to get at is whether this young man would remember whether or not he sent that telegram himself at an office removed from the Hotel Whitcomb on Market Street. I have asked him whether or not he went to the Powell Street Branch and sent this telegram.

“Q. I will ask you this question: Was the telegram over your signature or over Mr. Casserly’s?

“A. What do you mean by over my signature?

“Q. Was it signed ‘Casserly’ or signed ‘Wheeler’?

“A. If that was the case that I sent the telegram, I suppose that it was over my signature.

“Q. So as to clear that matter up, I want to get your recollection, Mr. Wheeler, as to whether you know who sent it.

“A. My only recollection is that the telegram was sent at the direction of Mr. Casserly. I have a faint recollection that I visited that telegraph office on Powell Street and sent the telegram myself, but I would not say positively, partly I suppose because—

“Q. (Intg.) We do not want your explanation. We only want to know whether you know, or not. We are calling upon your recollection of matters as to that.

“A. I have a faint recollection of calling at that

(Testimony of Ray B. Wheeler.)

telegraph office on Powell Street and sending a telegram at Mr. Casserly's request.

"Q. You did get deferred classification as a mariner, did you not?

"A. Before the time of calling at this board I was under deferred classification.

"Q. You were calling simply for a permit to allow you to make a definite voyage at that time?

"A. Yes.

"Q. How long had you been a mariner before applying for this deferred classification?

"A. Something over one year; I made one trip to Australia in 1917 and one trip to British Columbia early in 1918.

"Q. What vessel did you first sail on?

"A. On the 'Moana,' a British steamship.

"Q. Leaving Seattle?

"A. Leaving San Francisco January 3, 1917.

"Q. January 3, 1917?

"A. That was my first trip as a mariner. I left college in December, 1916, the University of California, and sailed on January 3d.

"Q. What is the next vessel?

"A. The next vessel was the 'Isaac Reed,' which sailed from San Francisco in March, 1917, for British Columbia. [29]

"Q. Then you were afterwards on the 'City of Par,' were you not, and on the 'Ecuador'?

A. Yes. I might state that I was discharged from the 'Isaac Reed' in Port Townsend and came over to Seattle, and rather than come right down

(Testimony of Ray B. Wheeler.)

to San Francisco again I wanted to look around the northern part of the State while I was there, and got into the shoe business in Seattle; that is how I came to be registered in Seattle, but my home is down here.

“Q. When you were registered, you were a shoe clerk, were you not? A. Yes.

“Q. And at the present time you are a shoe clerk, are you not? A. Yes.

“Q. At the present time that is your occupation?
A. Yes.

“Q. I show you now, Mr. Wheeler, a photostat copy of a telegram which purports to have been sent from San Francisco, Cal., 4 P. M., September 18, addressed to the Local Board, Division No. 6, 1416 Alaska Building, Seattle, Washington, and signed R. Wheeler, and ask you if you sent that telegram? A. I believe I did.

“Q. Have you any recollection as to where you sent it from?

A. From the Western Union at the Powell Street office.

“Q. Do you remember any circumstances now of having sent that telegram?

A. That simply refreshes in my mind the item that I know I did walk from the Draft Board to the Western Union office and send that telegram under the direction of Mr. Casserly.

“Q. Is that from your recollection, or from having seen the telegram? A. Yes.

“Q. From your independent recollection?

(Testimony of Ray B. Wheeler.)

A. From my recollection, from having seen that.

“Q. You would not know about it otherwise, would you?

A. I might have recalled, or refreshed my memory.

“Q. Now, Mr. Wheeler, with reference to that trip up to the Pacific Gas & Electric Company, who else accompanied you, if anybody, besides Mr. Noble? You said there was a stout gentleman, I believe.

A. A heavy set gentleman from the Department of Justice quarters in the Flood Building.

“Q. Was there a young lady present at any of these times who said anything with reference to your identification?

“The COURT.—You mean in the Flood Building?

“Mr. LEONARD.—Yes, in the Flood Building, or on the trip to the Pacific Gas & Electric Company. Were you questioned as to your resemblance or as to whether you were Wheeler or someone else?

A. Not that I know of. There was a stenographer in another room of the Department of Justice quarters in the Flood Building. I learned of her presence later on in the afternoon, when I was taken around by one of the gentlemen to the Flood Building, but she never saw me that I know of, and never had anything to do with me.

“Q. Do you remember whether or not this lady attempted to identify you?

A. In the Flood Building? [30]

(Testimony of Ray B. Wheeler.)

“Q. In the Flood Building, or any place.

A. I do not believe she did. I have no recollection of ever having seen her before.

“Q. No recollection whatever? A. No.

“Now, let us go to your conversation at the Hotel Witcomb. Do you remember the plan of the room there where the Draft Board held sessions?

A. Yes.

“Q. There was a counter in front, was there not?

“A. Yes, there was a counter running along like that, with a little anteroom to the side.

“Q. A little anteroom in the same room, or was it in a separate room? Was this a walled off room in the same large room, or was it a separate room? A. No, it was a walled off room.

“Do you remember in what position the telephone was?

“A. There was no telephone in the anteroom, to my recollection. I do not believe there was a telephone there.

“Q. As a matter of fact, Mr. Wheeler, didn't you get permission to telephone to Alameda and either telephoned to Alameda or attempted to do so?

“The COURT.—Where, at the Flood Building?

“Mr. LEONARD.—No, at the Hotel Witcomb.

A. No.

“Q. You are quire positive of that? A. Yes.

“Q. Who is the man that met you when you first went into the Draft Board room, do you know, that is, at the second visit at 5:30?

(Testimony of Ray B. Wheeler.)

A. I approached Mr. Casserly.

“The COURT.—That isn’t quite the question; who was the first man that you met? Was Mr. Casserly the first, or did you meet someone else?

A. I do not recall of any man approaching me or meeting me; I walked in the door and knew what business I was going on, and walked right to Mr. Casserly.

“Mr. LEONARD.—Q. As I understand it, the first time you called, on the 1:30 visit, there was no attempt whatever to detain you? A. No.

“Q. There was no question as to your identity? A. No.

“Q. On your second visit, you say there was some question about a permit, and you were detained?

A. No, I said on the second visit I was detained, but there were no questions asked me as to my identity or anything.

“Q. Who was the first one that you met when you went in the second time?

A. I approached Mr. Casserly.

“Q. You approached him first: Is that right?

A. Yes.

“Q. Where was Mr. Casserly’s desk, with reference to the counter, do you remember?

A. I just went up to the main counter, I couldn’t say in what part of the room. [31]

“Q. You do not remember, then, as to the details of just how you were accosted when you went in the second time?

(Testimony of Ray B. Wheeler.)

A. No; my recollection is that I was not accosted, but that I approached Mr. Casserly.

“Q. Do you know whether you were invited in behind the counter, or whether you stood right at the counter?”

A. Do you refer to the counter where business was transacted?

“Q. Let me ask you this question: Have you any recollection as to where Mr. Casserly’s desk was, or where he sat?”

A. I can only say my recollection is that he stood behind and near the counter, possibly sat at a desk in back of the counter, but in such a position that a person approaching the counter could communicate with him.

“Q. You would not recollect whether you stood at the counter or went back to his desk, or whether you called to him from the counter?”

A. No, I would not say.

“Q. About how long were you detained there, did you say?”

“A. I was asked to have a seat in this anteroom; I was sitting there possibly for about ten minutes, whereupon I got uneasy as to why there should have been so much delay, and I got up and was going out to inquire of Mr. Casserly what had caused the delay.

“Q. Who was in the room with you at the time?”

A. No one.

“Q. You are positive there was no one there?”

A. Yes, in the anteroom, as you call it.

(Testimony of Ray B. Wheeler.)

“Q. Do you remember the furnishings of the anteroom? A. Yes.

“Q. What were they?

“A. To a certain extent; there was one chair facing the chair that I was sitting in; there might have been one or two other chairs in the other room. The exit to the anteroom was out this way; I believe the anteroom was built up with a little sort of wall, a curtain effect making a wall; as to that curtain effect, it might have been a solid wall; but my recollection is that there was a rolling curtain making the wall.

“Q. Was there a desk in the room?

A. I do not believe so.

“Q. I would like you to please tell us definitely who you met first, who you first spoke to when you went in there.

A. I think I have already answered that.

“The COURT.—You have been over that two or three times.

“Mr. LEONARD.—We have not got a definite answer.

“The COURT.—He said he approached Mr. Casserly.

“Mr. LEONARD.—Q. Are you quite positive there was no one else there at all but Mr. Casserly?

A. There were other officials of the Draft Board that were around there, at various desks.

“Q. Was there not in that room with you a young lady and a gentleman? A. No. [32]

(Testimony of Ray B. Wheeler.)

“The COURT.—That is in the anteroom, you mean?

“Mr. LEONARD.—Yes.

“A. No.

“Q. Did you attempt at any time to leave the room?

A. At the expiration of about ten minutes, when I became uneasy as to why there should have been so much delay in taking out the permit, I started out to inquire.

“Q. Did you get outside of the room? A. No.

“Q. How far did you get?

A. About a foot in the rear of the door, when I was met by Mr. Casserly, something like this; the door was something like that, and he said, ‘I will have to detain you here.’

“Q. Were you outside the door?

A. On the inside.

“Q. You were on the inside? A. Yes.

“Q. You had not yet opened the door, had you?

A. The door was open.

“Q. The door remained ajar all the time?

A. I could have walked right out except Mr. Casserly barred the door and said, ‘I will have to detain you.’

“Mr. LEONARD.—Q. Mr. Wheeler, I understood from your testimony in chief that you felt very much aggrieved over the treatment you had gotten by being detained and having to go to the Southern Station and then to the City Prison. Did

(Testimony of Ray B. Wheeler.)

you return to the Draft Board and get your permit after that? A. Yes.

“Q. Did you make any complaint about the treatment to anyone there at that time?

A. I do not believe so.

“Q. Did you ever see Mr. Casserly about the matter and make any demand on him? A. No.

“Q. As a matter of fact, the war was over before you brought this suit, was it not? This happened September 18, 1918, and you filed your suit about September 14 of the following year, did you not?

“Mr. DEVOTO.—The record speaks for itself.

“Mr. LEONARD.—That is the fact, though, isn't it, Mr. Wheeler?

A. The war was over, when did you say?

“Q. November 11, 1918.

A. That is about the size of it, although in that connection I had notified this gentleman in the rear, Mr. Noble, Saturday of that week, that is, sailing day of that week, that I intended to prosecute the officials that put me through in that manner.

“Q. Where did you see Mr. Noble?

A. He visited the dock sailing day and I was in uniform down there with my mother and my sister, and I notified him that I was going to put the fellow through that pulled that deal on me.

[33]

“Q. Is that the only complaint that you made?

A. Yes.

“Q. Now, you sailed on what vessel at that

(Testimony of Ray B. Wheeler.)

time? A. The steamship 'Ecuador.'

"Q. You made several trips during that year, did you not? A. Yes.

"Q. About how long, on an average, were you in port? A. In San Francisco?

"Q. Yes. A. A week to ten days.

"Q. On each trip you stayed several days?

A. Yes.

"Q. You made no further complaint to anyone, did you, or any demand on Mr. Casserly?

A. No; a week or ten days we are in port, we are not at liberty a week or ten days; we are given one or two days off to visit our folks during the week or ten days in port, having been three months at sea; it was on one of those two days that I was deprived of my liberty through having been held by the department.

"Q. But subsequent to the occurrence of all these things you have testified to you were in port on several occasions, were you not? A. Yes.

"Q. You said that when you were first detained at the Whitcomb Hotel that you requested permission to communicate with your attorney or your folks, and, as I recall it, your statement was that this request was absolutely refused? A. Yes.

"Q. Will you state by whom the refusal was made? A. Mr. Casserly.

"Q. What did Mr. Casserly say?

A. 'You will have to take that matter up with the officers when they arrive.'

"Q. Was that the entire extent of the refusal?

(Testimony of Ray B. Wheeler.)

A. I took it up with the officers when they arrived.

“Q. Yes, but I understood that you made a request to telephone. I want to know with reference to that conversation.

“A. To communicate.

“Q. To communicate? A. Yes.

“Q. Was that request to telephone involved in that?

A. The telephoning would be involved in that, yes.

“Q. Did you say, ‘I want to communicate with my folks,’ or did you say, ‘I would like to telephone, can I go to the telephone’?”

A. I said I would like to have an opportunity to communicate with my folks, or my people and friends that I have in the city.

“Q. You did not then make the specific request to telephone, did you?”

A. I do not believe so; I believe I used the word ‘communicate.’

“Q. Are you quite sure you did not telephone to Alameda? A. Yes.

“Q. That is, from the board rooms at the Witcomb Hotel? A. Yes. [34]

“Q. Are you quite positive of that? A. Yes.

“Mr. DEVOTO.—Q. Do you know what you are saying about that, Mr. Wheeler?”

A. I understood the question to be—read the question.

(Last question repeated by the reporter.)

(Testimony of Ray B. Wheeler.)

“The COURT.—Your question is ambiguous. You mean by your question, ‘Are you quite sure’?”

“Mr. LEONARD.—Yes.

“Q. You are quite sure that you did not telephone from the Whitcomb Hotel? A. Yes.

“Q. Are you quite sure that you did not make a request to telephone?”

A. I made a request to communicate with my folks.

“Q. Are you quite sure that you did not go to the telephone? A. Yes.

“Q. You stated on your direct examination, I believe, that you had a sister, a teacher at that time in the Alameda school? A. Yes.

“Q. Mr. Wheeler, you were registered, as I understand it, as a shoe clerk, and then you got deferred classification as a mariner subsequent to that time, did you?”

A. Yes; I had been a mariner previous to being a shoe clerk.

“Q. As I understand you, until 1917 you had been on certain vessels, and at the time you registered you were a shoe clerk? A. Yes.

“Q. Then you took up the avocation of mariner subsequent to that time and got your deferred classification?”

A. No, I took up the avocation of mariner previous to the declaration of war by the United States; I was a mariner in January 1917, and war was not declared until April.

“Q. However, you were registered as a shoe

(Testimony of Ray B. Wheeler.)

clerk, and gave your occupation as that?

A. Yes, that was my temporary avocation at the time I registered.

“Q. You afterwards returned to the avocation of mariner, did you not? A. Yes.

“Q. You are now in the shoe business again?
A. Yes.

“Q. Attending the convention at San Francisco: Is that not right? A. Yes.

Mr. LEONARD.—That is all.

Redirect Examination.

“Mr. DEVOTO.—Q. Mr. Wheeler, did you ever make application to join the officers training camp?

A. I did. I made application while I was in Seattle to join the first officers training camp, and later on in Seattle I made an application to join the second officers training camp. On both occasions my application for enlistment in the officers training camp was denied. The only reason why I could expect that my application would be denied is that the officers training camp was [35] allowed to accept a certain number of men, and those men, naturally, were of the highest quality. My residence in Seattle was of short duration, and I gave local Seattle references and, no doubt, my references did not quite come up to the references of the men who were accepted; that is the only reason I know of why my application was not accepted. I did not claim exemption. There was a statement that we had to make upon registration, ‘Do you claim exemption,’ when I registered in the draft, and my

(Testimony of Ray B. Wheeler.)

answer to that was 'no.' The subjects I specialized in at the University of California were foreign trade; commerce and foreign trade. After war was terminated I resumed my studies at the University of California, I left and went to sea in order to go back and complete my university career. I remained at the University of California after the war was terminated in November, 1918, one year and a half and graduated from the University of California. Immediately upon graduation from the University of California, I attempted to get placed in the stock and bond business, and made application to two or three San Francisco firms in that business, but time drifted on for about three months, and I went back to the shoe business. I took up the career of a seaman in the early part of January, 1917, or about three months before war was declared by the United States. I took up the career of a seaman because I was interested in foreign trade, and I thought that would give me an opportunity to see the rest of the world, and I was interested in the sea, and later on, from my connection with the Pacific Mail Steamship Company, they had a course of schooling men from storekeeper to freight clerk and up to purser, and I felt that was a good business opportunity for a man interested in foreign trade. When I entered the career of a seaman I certainly intended to follow that avocation. As a result of my arrest no charge was ever preferred against me. I was never brought before any magistrate in the City and County of San Francisco and informed of any charge against me.

(Testimony of Ray B. Wheeler.)

Recross-examination.

“Mr. LEONARD.—Q. Mr. Wheeler, do you know why now, you were detained?”

“A. Not directly so, no. I suspect that I was detained for having been suspected of being a certain person by the name of Nolan, but I had no reason for suspecting that or for having that opinion other than through some indirect questions which were propounded to me at the Federal Department of Justice; I got that idea, but otherwise I have no reason to this day for knowing why I was detained.

“Q. You were asked the direct question, were you not, whether or not your name was Billy Nolan?”

“A. I was asked if I knew anyone by the name of Billy Nolan; I do not believe I was ever asked the direct question, ‘Are you Billy Nolan?’

“Q. At this time that the agent was cross-examining you as you have testified in your direct examination, were you not asked the question, ‘Are you Billy Nolan?’

“A. I do not believe so; I was asked the question—

“Q. (Intg.) At that time—

“Mr. DEVOTO.—Do you wish to explain that answer?”

“A. Yes, I do. I was asked the question in this manner: ‘Where in the world did you get the idea your name is Wheeler?’ And I was asked the additional question, ‘Did you ever know anybody by the name of Billy Nolan?’ That is the only reason that I have any idea as to what I was put in for to this day. [36]

(Testimony of Ray B. Wheeler.)

“Mr. LEONARD.—Q. Did it ever occur to you that the draft board had reason to believe that someone was using your name wrongfully? A. No.

“Q. And trying to get a permit, or a passport?

“A. No.

“Q. Are you positive that did not occur to you during any of this examination?

A. Positive, yes. The only inference I had as to any connection with Billy Nolan was it occurred to me at that time that Billy Nolan was possibly an employee or had been an employee of the Pacific Gas & Electric Co. and might have been suspected of embezzlement, or something of that kind; I had no idea that this was in any way, shape or manner connected with the draft, because all my draft papers and registration were in absolutely perfect condition.

“Q. Didn't it occur to you that reason of you being here seeking this permit that someone might have used your name and your card, having appearance similar to yours, to get the permit which you, alone, would be entitled to?

“Mr. DEVOTO.—I object to the question on the ground it is immaterial, irrelevant and incompetent and asking for the conclusion of the witness.

“The COURT.—Sustained.

“Mr. LEONARD.—I think it is proper cross-examination. He denies any knowledge and I think it is a proper question as to whether it would be reasonable for him to expect such a thing as that; it would go to the reasonableness of his detention.

(Testimony of Ray B. Wheeler.)

“The COURT.—Oh, no. He might suspect anything, but it would not affect the reasonableness of the detention.

Redirect Examination.

“Mr. DEVOTO.—Q. Mr. Wheeler, you stated that you called in the company of two operatives of the Department of Justice on an official of the Pacific Gas & Electric Company on Sutter Street in this city and county. Were you then informed that they were looking for a party by the name of Nolan who had embezzled money belonging to the Pacific Gas & Electric Company?

“A. No, I was not.

“Q. Did anyone belonging to the Department of Justice at any time tell you that they suspected you of being Mr. Nolan? A. No.

“Mr. LEONARD.—Q. Did any one of the Department of Justice men ask you at that time, or accuse you of having embezzled money from the Pacific Gas & Electric Company? A. No.

Testimony of John B. Casserly, for Plaintiff.

JOHN B. CASSERLY, being first duly sworn, testified on behalf of plaintiff as follows:

“Mr. DEVOTO.—I would like the record to show that I am calling this witness under Section 2055 of the Code of Civil Procedure of the State of California, which grants us the right to cross-examine an adverse witness without being bound by his testimony. [37]

“The COURT.—Very well.

(Testimony of John B. Casserly.)

“Mr. DEVOTO.—Q. Mr. Casserly, during the month of September, 1918, you were chairman of local draft board No. 1, were you not?

“A. I was not. I was a member of the board. I do not recall seeing Mr. Wheeler in the draft office on Market Street. I do not recall meeting a Mr. Wheeler at all during that month. My recollection is that I did phone to the Southern Police Station asking the station or the officer answering the phone to send up two policemen to Local Draft Board 1 on Market Street. I said, ‘There is an arrest to be made here, send an officer to make the arrest, or words to that effect. That is my rememberance. I don’t remember what I said, when the officers arrived, except that I was in the room at the time with the man who was to be arrested, and that the officer came in, the man was indicated to him and the officer took him in charge. I do not remember, Mr. Devoto, what I said to the officer; I do not remember. It is three years ago. I do not remember what I told the police officer when they called at the Hotel Whitcomb in response to my telephone call. I just said, ‘I do not remember.’

“Q. Did you say anything to the police officers, on what charge you were having this young man arrested? A. I have no recollection of that.

“Q. Why did you send for the officers?

“A. Because I was ordered to do so from Mr. Blanford’s office.

“Q. Were you ordered to arrest Mr. Wheeler?

“A. I was ordered—if you wish to know, the word

(Testimony of John B. Casserly.)

came over the telephone if a man called Ray B. Wheeler should come into the board room asking for a seaman's passport from Local Draft Board 6 of Seattle to detain him.

"Q. You simply followed our instructions?"

"A. Exactly.

"Q. You did not investigate or make an investigation of your own to ascertain whether you were making a mistake, or not?"

"A. None whatever.

"Q. You simply got those instructions, and followed them out to the letter? A. Certainly.

"Q. As a result of that phoning to the Southern Police Station, Mr. Wheeler was arrested by these two officers? A. Yes.

"Q. That is all? A. Those are the facts.

"Mr. LEONARD.—No questions.

"Mr. DEVOTO.—That is plaintiff's case.

Testimony of John B. Casserly, for Defendant.

JOHN B. CASSERLY, was called in his own behalf and testified:

"During all of the times mentioned by the witness Wheeler, I was a member of Draft Board No. 1 at San Francisco and it had headquarters at the Whitcomb Hotel. The other members of the draft board were: Dr. D. B. F. Easton, who was living in the Whitcomb Hotel, and Mr. Wm. Crocker. There were three members of the Board. My recollection is that after I had told the desk clerk—Charles A. Baum—'If Mr. Wheeler comes in, let

(Testimony of John B. Casserly.)

me know,' or something to that effect. I was sitting at my table, which was quite a ways away from, at right angles to, the main desk, and Baum came to me and informed me that Ray B. Wheeler was there. Then I told him to [38] take him into the clerk's office and detain him on some pretense until I could communicate with the Southern Station and have the arrest made in conformity with my orders from Blanford's office. I was at this time, by reason of being a member of the Draft Board, a deputy sheriff as well. I have a document that indicates my appointment as a deputy sheriff of San Francisco. (The document was marked Defendants' Exhibit 'A.')

My recollection is that I went in to the clerk's office and joined in the conversation with Wheeler; that after a few minutes, or minutes, Mr. Wheeler signified a desire to go, and he was then told, I presume by myself, that he could not go. 'Why not?' he said. I said, 'You must consider yourself here under detention.' 'Why?' 'I don't know,' I said, nor did I know what the man was wanted for.

Testimony of H. H. Dolly, for Defendant.

H. H. DOLLY, called on behalf of defendant, being first duly sworn, testified as follows:

"I am employed by the Los Angeles Railway Co. I was for a time a Department of Justice special agent. I was such during the time referred to here by Mr. Wheeler.

"Q. On September 18, 1918, did you receive a

(Testimony of H. H. Dolly.)

communication with reference to Ray B. Wheeler?

“A. I did.

“Q. What was that communication?

“A. A lady called up on the telephone saying that she was connected with the Powell and Ellis office of the Western Union Telegraph Company.

“Mr. DEVOTO.—I object to this testimony on the ground it is immaterial, irrelevant and incompetent, hearsay and not binding on the plaintiff.

“The COURT.—I think I shall let it go in, Mr. Devoto.

Exception.

The witness H. H. Dolly continued as follows:

“Saying that a man had come in to file a telegram to the Draft Board in Seattle, Washington, signing the name ‘Ray B. Wheeler’ to this telegram, and that she knew this man, and knew him to be a man named Billy Nolan.

“Mr. DEVOTO.—Same objection to all this testimony, your Honor.

“The COURT.—Yes.

“I immediately left my desk in the Flood Building and went over to the telegraph office, where I had a talk with Mrs. Smith, who was employed by the company at that point. She told me that this Billy Nolan had been an intimate friend of her sister’s for some time, and that as such friend she had been in his society quite often; that she was absolutely certain that this man who gave the name of Wheeler was no other than this Billy Nolan, and that he filed a telegram to some local board in Se-

(Testimony of H. H. Dolly.)

attle asking them to wire the local board No. 1 in San Francisco, instructing them to issue a permit for him to go to sea as a mariner, and that to that telegram he signed this name 'Ray B. Wheeler.' I returned to the office and called up Mr. Casserly, of Local Board No. 1 in San Francisco, and told him that I had reason to believe that a man giving the name of Ray B. Wheeler would call at his office either that day or the following day, and that in case he should call to hold him. [39]

As I recall it, my recollection is that I communicated to Mr. Casserly the circumstances as I understood them; that is my best recollection; but I would not be positive. As I remember, during the latter part of the following forenoon, Mr. Noble, of the Department of Justice, telephoned to me from the police headquarters that there was a man named Wheeler under arrest there, imprisoned, and I asked him to bring the man right up to my office; if I am not mistaken, I asked him to delay his other business which he had at the prison for the purpose of bringing this man to the office immediately.

"Mr. DEVOTO.—I would like to have the record show that my objection goes to all this testimony, and the exception is also noted.

"The COURT.—Yes.

"Shortly after that conversation Mr. Noble did come to the office and brought Mr. Wheeler with him; and I think Mrs. Smith had told me the day before that this fellow Nolan had been an employee of the Pacific Gas & Electric Company, in the

(Testimony of H. H. Dolly.)

auditor's office, and I detailed Mr. Noble to take this man up to the office of the auditor of the Pacific Gas & Electric Company for the purpose of identification, and he returned, after leaving the office, saying that he had taken the man there and that the [40] auditor said that he was not Billy Nolan. Thereupon I got into communication again with Mrs. Smith and asked her to come to the office and bring her sister, with whom this man Nolan had kept company, and later in the day, as to the precise time I cannot give it, but shortly after both ladies came to the office and said that they were mistaken, this was not Billy Nolan.

“Mr. LEONARD.—Q. Did they say anything as to whether he looked like Billy Nolan or not?”

“A. Yes, Mrs. Smith said so in particular.

“The COURT.—You may make special objections to this question; perhaps that would be subject to the objection.

“Mr. DEVOTO.—I do not want to be interjecting objections all the time.

“Mr. LEONARD.—Q. Now, Mr. Dolly, with reference to matters at that time, was this the ordinary and customary procedure in such cases?”

“Mr. DEVOTO.—I think we will have to make the special objection. I object to that question on the ground it is immaterial, irrelevant and incompetent and not binding on the plaintiff.

“The COURT.—Sustained.

“Mr. LEONARD.—Exception.

“I did not accompany the man to the Pacific Gas

(Testimony of H. H. Dolly.)

& Electric Company. My investigation was entirely made at the Flood Building, and by visiting Mrs. Smith, with the exception of my trip to the office of the Western Union Telegraph Company, my part of it was conducted entirely in the Flood Building. I was the man who dismissed him and told him he he could go. I do not recall the exact words I used, except that I was satisfied that this was not the man who Mrs. Smith took him to be, and I told him that he could go, that we had no further interest in detaining him. As I recall, we did not explain to him, the situation what it was all about. He complained about the treatment he had received; he was sore about being arrested. I don't remember just what he said.

“Mr. DEVOTO.—At this time, I will ask that the witness' testimony relating to the conversation with this operator be stricken out on the ground it is immaterial, irrelevant and incompetent, hearsay, and not binding on this plaintiff.

“The COURT.—Overruled.

“Mr. DEVOTO.—Exception.”

Cross-examination.

“Mr. DEVOTO.—Q. Mr. Dolly, you personally had nothing to do with the original arrest of Mr. Wheeler at the Whitcomb Hotel on the 18th of September, 1918?

“A. Outside of giving him instructions to hold him. I had nothing to do. All I gave was instructions. I was not present. I did not phone to the

(Testimony of H. H. Dolly.)

officers asking them to come up to the Whitcomb Hotel to arrest this party. I had nothing to with that, not directly.

“The COURT.—Did you say to take this man to the prison and hold him until next day?

“A. No, those were not my words; as I recall it, I just asked Mr. Casserly to hold him in case he came in. [41]

“Mr. DEVOTO.—Q. You did not instruct Mr. Casserly to arrest him?

“A. I did not use that word.

“Q. You said, ‘Detain him’?

“A. I do not think I said that; I think I said to hold him.

“Q. What do you mean by ‘hold’?

“A. I meant, to see that he did not get away; that is what I meant.

“Q. You did not mean to take him to the City Prison, did you?

“A. Well, if it should have been necessary, in order to hold him, I certainly would have said that. If I had thought he would let him go without taking care of him, I would have instructed him in language which would have left no doubt in his mind. I had no idea at the time I telephoned but that he was Billy Nolan [42] and that he should be arrested.

“Q. But you did not instruct Mr. Casserly to arrest him? A. No, I did not use that word.

“Mr. DEVOTO.—That is all.

“The COURT.—Did you not arrange with Mr. Casserly to be advised the moment he came in?

(Testimony of H. H. Dolly.)

“A. I do not recall whether I did or not. I do not think I did.

“Q. You were not arresting citizens at that time and throwing them into jail without a charge, were you?

“A. No; my idea was simply to interrogate this man, to ascertain whether or not he was the man whom Mrs. Smith said he was.

“Q. How were you to find out when he came in?

“A. I do not recall what arrangements were made, or if there were any arrangements made.

“Q. The only information you had came from this lady? A. Yes.

“Q. It would have been a very easy matter to have had her identify him? A. Yes.

“If you had been advised that he had been detained?

“A. If I had known, if I could have gotten hold of the man, I could probably have decided the question in a few minutes.

Redirect Examination.

“Mr. LEONARD.—Q. Mr. Dolly, at what time did you close your office usually, what office hours did you keep?

“Our office hours were from nine o'clock in the morning till five at night; those were the usual office hours a great many times I stayed very much later.

“Q. Would it be likely that you would be reached at your office on the telephone between 5 and 6 o'clock?

(Testimony of Thomas L. Tobin.)

“A. That would have been a most unlikely hour of the day. [43]

Testimony of Thomas L. Tobin, for Defendant.

THOMAS L. TOBIN, called on behalf of defendant, after being duly sworn, testified as follows:

“I am a lieutenant of police of the City and County of San Francisco. As such I have charge of the City Prison, and had charge of it during the month of September, 1918. I have had charge of it for the last fifteen years. Our cells are always kept in first-class condition, and every cell in every part of the prison is swept out every morning, the blankets are all taken out and fumigated every morning, pillows, and everything else, and I think we have the credit of having the cleanest and best prison in the United States. As to the food that is served, the morning meal, they get mush, bread and coffee; at noon time they get a meat dinner, meat and vegetables, bread and tea; at five o'clock in the afternoon they get bread and tea; they get a very hearty meal at twelve o'clock.”

Cross-examination.

“I do not recall the time that Mr. Wheeler was in the City Prison. When we are very crowded, which is not very often, there are never more than three placed in a cell; very rarely are there more than two in a cell. It is not a fact that during the war the cells in the City Prison were crowded. I am sure of that. I could easily accommodate 300, and it was rare that I ever had 300 there. It may be possible, but it is very improbable, that Mr.

(Testimony of Thomas L. Tobin.)

Wheeler was in a cell with three others during September, 1913, for the reason that there are but three beds in the cell, and it is rare that there are three men in a cell at any time, even during the war. I was not there on the evening of September 18th. I am not there at night at all. It is under my supervision, and there are certain rules and orders to be carried out by the men who are there; there is always a corporal or sergeant behind the desk and he takes my place when I leave. I could not say positively how many men were in the cell that evening."

Testimony of R. B. Noble, for Defendant.

R. B. NOBLE, called on behalf of the defendant, after being duly sworn, testified as follows:

"I was a special agent of the Department of Justice in September, 1918. I saw the plaintiff in this case on the morning of the 19th at the City Prison. His identity was brought to my attention, I think, by Mr. Dolly phoning to me to bring him from the City Prison to his office. I took him to Mr. Dolly's office immediately. When he was questioned there I do not think I was present. I took him up to the Pacific Gas & Electric Company; they said they did not know him; that he was not known there. That is all that I remember was said. I do not think I was present when Mrs. Smith was. I remember she came there—there was some talk of her being asked to [44] come. As an agent of the Department of Justice, I had a detail at that time at the City

(Testimony of R. B. Noble.)

Prison. The classes of cases usually were to investigate supposed draft evaders. I would say as to the condition of the prison, from my observation in and out of there, that I never found it in any other shape than as Lieutenant Tobin stated. I have no recollection as to the cell that Mr. Wheeler was in."

Cross-examination.

"Mr. DEVOTO.—Q. Mr. Wheeler was taken into custody, according to your information, for a man named Nolan: Is that correct?

"A. I found him booked at the City Prison under the name of Wheeler."

"I did not know that our department suspected Mr. Wheeler of being Mr. Nolan until the next day. I ascertained the fact the next day. I don't know what Nolan was wanted for. I went up to the Pacific Gas & Electric Company's office with Mr. Wheeler."

"Q. Do you want to tell the jury now that you do not know what Nolan was wanted for?

"A. I was asked to take him to the Pacific Gas & Electric Company, to identify him, whether he was Nolan or not.

"Q. But you don't know what Nolan was wanted for?

"A. I did not know the circumstances of the case at that time, no.

"Q. Do you know now what Nolan was wanted for? A. Yes.

"Q. What was he wanted for?

(Testimony of R. B. Noble.)

“A. Supposed to be Mr. Wheeler, here.

“Q. What charge was preferred against Nolan, if any?

“A. I don't remember what they booked him as.”

“MR. DEVOTO.—Q. Mr. Noble, is it not a fact that the party that you were really endeavoring to apprehend was named Nolan? Isn't that the fact, and don't you know that of your own knowledge?

“A. Well, at that time, you see, I was not in the investigation. I know now. At that time I had nothing to do with his arrest. I was merely detailed to the City Prison to investigate supposed draft evaders, and upon reaching the prison I received instructions to bring Mr. Wheeler to the office, which I did.

“Q. Did you question Mr. Wheeler at all?

“A. I did not.

“Q. You did not ask him any questions at all?

“A. I had nothing to do with that thing.

“Q. All you had to do was to bring him from the City Prison to the Flood Building?

“A. Those were my instructions.

“Q. You did nothing else?

“A. I did nothing else, other than take him, as I said a moment ago, to the Pacific Gas & Electric Co.

“Q. What instructions did you receive in regard to taking him to the Pacific Gas & Electric Company?

“A. To go there and see whether or not he was Nolan.

(Testimony of R. B. Noble.)

“Q. By whom were you given those instructions?

“A. I think Mr. Dolly.

“Q. When you arrived at the Pacific Gas & Electric Company whom did you see? [45]

“A. One of the gentlemen there, I do not remember his name.

“Q. Was Mr. Wheeler there?

“A. Mr. Wheeler went there with me.

“Q. What was the conversation that you had with this official of the Pacific Gas & Electric Company?

“A. If my memory serves me correctly, I asked him if he could identify him as Mr. Nolan, and he answered it was not Mr. Nolan, although he looked a great deal like him.

“Q. Did you discuss with this official why they wanted Mr. Nolan? A. No.

“Q. You didn't know what they wanted him for?

“A. Other than I have already told you, no.

“Q. Do you know what they wanted him for?

The COURT.—That would be immaterial.

Testimony of Gertrude R. Smith, for Defendant.

GERTRUDE R. SMITH, called on behalf of defendant, being first duly sworn, testified as follows:

“I was employed at the Western Union Telegraph office on September 18, 1918, at Powell and Market Streets station. I did report a case to the Department of Justice, as has been testified to here.

“Q. Will you state just what you did?

“Mr. DEVOTO.—I object to that question on the ground it is immaterial, irrelevant and incompetent,

(Testimony of Gertrude R. Smith.)

hearsay, not binding on the plaintiff, and not within the issues of this case.

“The COURT.—Overruled.

“Mr. DEVOTO.—Exception.”

“The Western Union at that time was under Government control, and our instructions were if any telegrams went through that *we* were of a suspicious character to report the matter to the Department of Justice; at the time Mr. Wheeler came in I was positive that it was he; I did not care to wait on him at the counter; I had another young lady take his telegram; then after the young lady accepted the telegram I read the telegram, and I then reported the matter to my superior, and he told me to report the matter to the Department of Justice, which I did, and I believe that was all that day. I was personally acquainted with this man Billy Nolan. I believe my acquaintance with him extended from the time of the Exposition up to the time of this particular case coming up. I had dined with him in company with others. As a matter of fact, my sister kept company with him some time. Then, next day, I believe, or the same day, Mr. Dolly came over from the Department of Justice, after I reported the matter, and I stated the case to him and told him how positive I felt it was Mr. Nolan, and I presumed he was sending this telegram in order to go to sea in order to avoid service in the war, and I thought it was my duty to report that case. I was questioned subsequently with regard to this matter. My sister has since died.

(Testimony of Gertrude R. Smith.)

Then the next day I was called to the Department of Justice and I saw Mr. Wheeler's passport, and his photo on that passport, and when I saw the photo with his hat off, I began to have my doubts that he was Mr. Nolan; at the time that I suspected it was Mr. Nolan, Mr. Nolan was wanted for embezzlement, not from the Pacific Gas & Electric Company, but on some other matter. [46]

"The COURT.—Wanted for what?

"A. Embezzlement.

"Mr. LEONARD.—Q. That was the extent of your identification, or did they ask you some other questions as to [47] whether you knew him or not?

"A. I believe so, as to the extent of my acquaintance; then the next day, as I said, I was called over to the Department of Justice and saw his photo and began to have my doubts, and I said to make sure, 'Send for my sister, because her acquaintance was better, she knew him better,' and so she came down and she immediately said no, it looked very much like him, but it was not he."

**Testimony of J. B. Casserly, for Defendant
(Recalled).**

J. B. CASSERLY, recalled on behalf of defendant, testified as follows:

"My recollection is that it was well after five o'clock when Mr. Wheeler called the second time at my office. I know that our police officer had gone home, who was detailed to our board room, and

(Testimony of J. B. Casserly.)

that is why I telephoned to the station. We had a police officer there always during certain hours of the day; he had gone home, and I think it was along about half-past five or quarter of six. I have no recollection of having telephoned to the Department of Justice. The reason the arrest was made in that way was because it was too late to send him to Blanford's office; otherwise, we would have sent him there for identification. There was no one else present in the draft room when he came in the second time except the clerks and myself—I was the only member of the board present. Dr. Easton was sick upstairs, and Mr. Crocker was absent. I was acting as the sole member of the board. I had to, unfortunately. My habits at the draft office, as to hours, were, we opened up about eight o'clock and we ran through the day, going out to get something to eat in the evening about half-past six or seven, and back about eight o'clock, and from that on to ten or half-past ten, eleven or twelve, as long as there was work to do.

“As to my recollection of details of what took place while Mr. Wheeler was there, I have none. There is not a scrap of paper in existence about that; I have nothing but my memory to test. I never saw this man to my knowledge again until I saw him this morning in court, and the thing happened 33 months ago. Now, what I have given to you and the jury is simply my recollection of what occurred. I have done that to the best of my ability; he expressed no resentment at his treatment

(Testimony of J. B. Casserly.)

I was told when he was back again the next day. At all events, I have no recollection of seeing this man until to-day.

“The COURT.—May I ask a question? I would like to ask the witness whether this was a special case, or were you asked frequently to hold people?”

“A. No, I don’t know that it was a special case; we had a number of telephones, of course, from the Department of Justice about official business, and we carried them out the best we could.

“Q. My only object in asking was if this was a special case it might make more of an impression on your memory than if you had them all the time.

A. It made an impression to this effect, we heard nothing more about it.” [48]

Cross-examination.

“Mr. DEVOTO.—Q. You have testified that you also were a deputy sheriff at this particular time; is that correct? A. I was.

“Q. Did you make this arrest as a deputy sheriff, or as a citizen?”

“A. I made it as a member of the draft board, Mr. Devoto.

“Q. Then you made it as a citizen?”

“A. As a member of the draft board, sworn to carry out the laws of the United States and obey the orders of the Department.”

“Q. Mr. Casserly, why did you testify that you were a deputy sheriff at the time that you had Mr. Wheeler arrested?”

(Testimony of J. B. Casserly.)

“A. I don’t know of any particular reason, I am sure, except it was a fact.

“Q. Did you testify that you were a deputy sheriff for the purpose of conveying the idea to the Court and the jury that you were a deputy sheriff at the time that you arrested this party, and arrested him as the deputy sheriff?

“A. No; I have told you already I did not arrest him as a deputy sheriff.

“Q. Then you did not arrest him as a deputy sheriff?

“A. I arrested him as a private citizen in obedience to orders of the Department of Justice.

“Q. Did you ask Mr. Wheeler before or after you phoned to the Southern Police Station whether he had any papers or documents on his person showing his identification? A. No.

“Q. You didn’t ask any questions; is that correct?

“A. I did not.

“Q. No questions whatsoever? A. No.

“Mr. LEONARD.—Q. You left the investigation to the Department of Justice? A. Absolutely.”

Testimony of William L. Curtin, for Defendant.

WILLIAM L. CURTIN, called on behalf of defendant, being first duly sworn, testified as follows:

“My present address is Sacramento. I was chief clerk in Draft Board No. 1. I occupied the desk in the rear of the draft office. That is the room referred to as the anteroom. I have some recollection as to Mr. Wheeler coming in. As far as I can

(Testimony of William L. Curtin.)

remember, Mr. Charles A. Baum, who was the desk man, brought Mr. Wheeler to my office, stating, 'This is Mr. Wheeler, for whom we have got information from the Department of Justice,' and I asked Mr. Wheeler to take a seat, and Mr. Wheeler, I believe, asked me on what ground he was detained and I replied, 'You are detained pending investigation by the Department of Justice.' I believe he inquired how long he would have to remain, and I said, 'A short time'; he seemed quite perturbed over it, and asked if he might be permitted to phone to relatives or friends across the bay, and I said certainly he might, and he did so phone as far as I remember. We had three telephones; there was one in the office, and one in the [49] outer office, and one in the medical examination room. I do not recall exactly which one he went to. Occasionally the phone in the inner office was out of order; I am not positive as to whether he phoned from the inner office or from the outer office. I recall that he did telephone. He was a neat-appearing young man.

"Q. Did he have any parcels or anything else with him?

"A. I believe that he carried a bouquet—a bouquet of flowers."

"I believe it was Mr. Baum who brought him in; it was the general procedure for Mr. Baum to take the men from Mr. Casserly's desk, which was located a considerable distance from my office; Mr. Baum generally brought them in to the inner office. This occurred probably 5:30 or 6, or possibly shortly after

(Testimony of William L. Curtin.)

6. I could not say exactly how long Mr. Wheeler was in my room; probably 15 or 20 minutes."

Cross-examination.

"Mr. DEVOTO.—Q. Did you see Mr. Wheeler in the telephone booth?

"A. There was no telephone booth in the office.

"Q. Did you see him actually use the telephone?

"A. Yes.

"Q. How far away were you when you saw or heard him? A. Well, not many feet.

"Q. How many feet?

"A. I could not say, now; if he phoned from the outer office he could have been sixteen or eighteen, or twenty feet away; if he phoned in the inner office, I would be probably as close as six feet to him.

"Q. Where was this that Mr. Wheeler phoned, as you claim?

"A. I cannot say now; I do not remember whether it was from the inner office or the outer office.

"Q. Was he close enough to you to hear him?

"A. I never paid any attention to what a man phoned over the phone; that is his private business.

"Q. Is it not possible, Mr. Curtin, that you are mistaken in this particular case, and that you are confusing Mr. Wheeler with someone else?

"A. I hardly think so.

"Q. You might be mistaken?

"A. I could be; yes.

"Q. You would not swear positively, then, that Mr. Wheeler used the telephone?

(Testimony of William L. Curtin.)

“A. I would not swear positively, but I am almost certain in my own mind that he did.

“Q. But you would not swear positively?

“A. No, I could not.”

Testimony of Charles A. Baum, for Defendant.

CHARLES A. BAUM, called on behalf of defendant, testified as follows:

“I was a clerk in Draft Board No. 1 at the time mentioned in this case. As such, I was at the counter; everyone had to go by me as they came into the office; I would direct them either to one of the members of the Board, or to the chief clerk. I have a slight recollection of Mr. Wheeler’s case.

“On September 18, 1918, I remember the fact of his going to the telephone, more than anything else, because [50] I was in the outer office, and I am positive he went to the phone; I won’t say he phoned, but I know he went to the outside telephone to phone; I do not know if he phoned or not. It was Mr. Wheeler who went to the phone; I do not know if he phoned or got his number, but I know he went to the telephone. The general procedure would be he would come to me first, and then I would direct him to one of the members of the board where he would get his passport; in this particular case I was instructed by Mr. Casserly in case a Mr. Wheeler came to hold him, or to let Mr. Casserly know that he was in, as naturally, the man would come to me first at the counter; and, if I remember right, Mr. Wheeler came in and I let Mr. Casserly know he

(Testimony of Charles A. Baum.)

was in, and at the same time took him in to Mr. Curtin's office. That is the best of my recollection, it is so far back."

Cross-examination.

"Mr. DEVOTO.—Q. Is it not possible, Mr. Baum, that you saw Mr. Wheeler go to the telephone on the occasion of his first visit?

"A. No; this was in the evening; this was between 5:30 and 6:30, because I know it was just about the time we were closing up.

"Q. Do you recall Mr. Casserly phoning to the Southern Police Station? A. No, I do not.

"Q. Can you say whether or not Mr. Wheeler went to the telephone before the policeman arrived there, or after the policeman arrived there? A. Before.

"Q. How long before?

"A. I should judge from the time I took him in the inside office, before the policeman came, it must have been five or ten minutes; I would not say for sure how many minutes.

"Q. How close were you to him then?

"A. The same distance I am from you.

"Q. Did you see him use the telephone?

"A. I saw him at the telephone desk.

"Q. What do you mean by 'at the telephone desk'?

"A. Standing there as though he was to phone.

"Q. You did not see the telephone in his hand, did you? A. No.

"Q. You would not state positively that he did use the telephone?

"A. He was at the telephone, but I could not say that he used it, because I did not listen."

Testimony of Bertha J. Baum, for Defendant.

BERTHA J. BAUM, called on behalf of defendant, testified as follows:

“I am the wife of Mr. Baum who just left the witness-stand. I was employed by Draft Board No. 1 during the time testified to here as stenographer. I occupied the desk with Mr. Curtis. I do recall the circumstances of Mr. Wheeler’s visit there at 5:30 on September 19th. I could identify him from having seen him that time when he was there. [51] I think yesterday that I recognized him. As to what took place there, as near as I can remember, Mr. Casserly came in to talk to Mr. Curtin about Mr. Wheeler, that he was wanted by the Department of Justice, and that when he came in there he was to be held. And he finally did come in, and came into our office; I don’t know what happened in the outside office, but he was finally brought into our office. I remember him coming into the office, when he stayed there. I remember he went to the telephone. I remember that he had a little parcel of flowers, or something like that. He went to the telephone in the outside office.”

Cross-examination.

“Mr. DEVOTO.—Q. Did you see him use the telephone?”

“A. I saw him at the telephone desk, where the telephone was.

“Q. But you did not see him use the telephone, did you?”

(Testimony of Bertha J. Baum.)

“A. I did not see him, because I did not look to see.

“Q. All you saw was that he was near the telephone desk?

A. That he was right at the telephone.

“Q. Did you see the telephone in his hand?

“A. No, because I had no occasion to be in there to use the phone.

“Q. Did you see the receiver up to his ear?

“A. No.

“Q. You did not see him use the telephone?

“A. I did not see him use the telephone, but he was at the telephone.

Redirect Examination.

“While he was in the room he asked if he could use the telephone to communicate with some one across the bay. He was allowed to use it by Mr. Curtin. With that, he left the room.”

Recross-examination.

“Mr. DEVOTO.—Q. What kind of a telephone was it that he used, a telephone that could be used for long-distance calls? A. Yes.

“Q. Did it have a nickle-in-the-slot arrangement?

“A. No.

“Q. All that you had to do was to take the receiver from the hook and call the party? A. Yes.

“Q. And you could use it for long-distance calls; is that correct? A. Yes.

“Q. How far were you from Mr. Wheeler when you saw him at the telephone desk?

(Testimony of Bertha J. Baum.)

“A. I was about the width of the table.

“Q. How many feet would you say that was?

“A. About like that.

“Q. Did you hear him call any number?

“A. No.

“Q. You did not see him use the telephone?

“A. No.” [52]

Testimony of R. R. Reidford, for Defendant.

R. R. REIDFORD, called on behalf of defendant, testified as follows:

“I am auditor for the Pacific Gas & Electric Co. and was such on the 18th day of September, 1918. I recall an occasion when a man was brought in to me and I was asked whether or not I recognized him as Nolan. This young man was brought up by one or two others, I do not recall whether there were one or two, and the information girl told me he was outside and wanted to see me, so I came out of my office to the outer office and was asked by one of the men who had this man in charge whether or not he was Nolan, a former employee of the department, and I told him he was not. I stated in general appearance he looked somewhat like Nolan. I got the impression then that a description of one, without a photograph, or knowing him personally, would fit both men in general. Mr. Nolan had worked in our office as an employee of the Pacific Gas & Electric Company, in the same department with me.”

(Testimony of R. R. Reidford.)

Cross-examination.

“Mr. DEVOTO.—Q. What was Nolan wanted for? A. I do not know.

“Q. Was he guilty of embezzlement of funds of your company? A. Not so far as I am aware.

“Q. You do not know why they were looking for him, do you?

“A. I have no idea why they wanted him at all.

“Q. You had no idea at that time what he was wanted for? A. I did not know he was wanted.

“Q. You did not know what he was wanted for, I say? A. No, I never knew.

“Q. The only question put to you was whether this party here was Nolan? A. Yes.”

“Mr. LEONARD.—That is the defendants' case.

**Ray B. Wheeler, in His Own Behalf
(Recalled in Rebuttal).**

“Mr. DEVOTO.—Q. Mr. Wheeler, you have heard three witnesses here, Mr. and Mrs. Baum, and Mr. Curtin testify that you went to the telephone desk, that, is, on the 18th of September, 1918, at about 5:30; is that correct?

“A. It may have occurred that I approached the telephone desk, with the inquiry at the same time, ‘Can I communicate with my folks and some friends and an attorney?’ That may be correct.

“Q. Was that request granted?

“A. That is, it may be correct that I approached them; it is correct that I inquired if I might com-

(Testimony of Ray B. Wheeler.)

municate with them, but that request was not granted.

“Q. Did you use the telephone?

“A. I did not use the telephone.” [53]

Cross-examination.

“Mr. LEONARD.—Q. To whom did you make the request? A. Of Mr. Casserly.

“Q. Where was Mr. Casserly at that time?

“A. Standing in the doorway of the anteroom.

“Q. Was there anyone else present?

“A. There was no one else present *by* Mr. Casserly.

“Q. You say there was no one else present?

“A. There was no one else present in the anteroom except Mr. Casserly and myself at that time.

“Q. Was there anyone present in the draft board room at all?

“A. There were some clerks present in the outer room of the draft board, at the time when I went into the anteroom; at the time when I was taken out of the anteroom to confront the arresting officers, I am not certain whether there was anyone else in the outer room, or anyone else here besides Mr. Casserly. I was only concious of the presence of Mr. Casserly.

“Q. Are you positive that there was no one in the anteroom but yourself?

“A. In the anteroom, I am positive that there was no one else but myself.

“Q. Was there a desk in the anteroom?

“A. There may have been.

(Testimony of Ray B. Wheeler.)

“Q. Was there a telephone there?

“A. I do not believe so.

“Q. There was no telephone extension in the anteroom? A. I do not believe so.

“Q. As a matter of fact, you do not know whether there was a telephone in the anteroom or not?

“A. I do not believe there was a telephone.

“Q. Do you or do you not know?

“A. I am not positive whether there was a telephone.

“Q. You are sure there was a desk in there, are you not?

“A. I do not believe there was a desk in the part of the anteroom that I was in.

“Q. You were only in one room?

“A. Yes, it was a small anteroom.

“Q. You were not in a third room during the time you were there? A. No.

“Q. You were only in the Draft Room, and what you term the anteroom? A. Yes.

“Q. Do you know the location of what was known as the medical examination room? A. No.

“Q. Did you ask Mr. Curtis for the privilege of telephoning? A. No, I did not.

“Q. Did you talk to anybody else but Mr. Casserly?

“A. Excepting the police officers who called to arrest me, Mr. Casserly was the only one I talked to.

“Q. Mr. Wheeler, when you called at the draft board room, did you have any parcels with you?

(Testimony of Ray B. Wheeler.)

“A. Yes.

“Q. What did the parcels contain?

“A. Something besides flowers; I could not say offhand, but a couple of little packages, I was taking home from the ship.

“Q. Did you have something besides flowers?

“A. Yes, it was something besides; I mean I did not have flowers with me.

“Q. You are sure you did not have flowers?

“A. I am positive I had no flowers with me at that time.” [54]

Redirect Examination.

“Mr. DEVOTO.—Q. At any time during this interview, did you have any conversation with Mr. Curtin or Mr. or Mrs. Baum? A. I did not.

“Q. All your conversation was with Mr. Casserly; is that correct? A. Yes, positively.”

Recross-examination.

“Mr. LEONARD.—Q. When did you know that it was Mr. Casserly by name?

“A. I knew it was Mr. Casserly the first time when I went up to the draft board at 1:30 that afternoon.

“Q. You were not sure that it was Mr. Casserly when you came into the courtroom here, were you?

“A. I was absolutely positive.

“Q. As a matter of fact, you did not see Mr. Casserly from the time of this occurrence until the time of this case did you?

“A. I called at the draft board the day after

my release and saw him there, and had a few words with him.

“Q. Did you at that time complain about your arrest?

“MR. DEVOTO.—I object to that question as irrelevant, immaterial and incompetent.

“THE COURT.—I hardly see how it is immaterial. Sustained.” [55]

Charge to the Jury.

The Jury was instructed as follows:

The COURT.—(Orally.) Gentlemen of the Jury, the action which is on trial here is one for false imprisonment, as it is ordinarily called, and somewhat to be distinguished from a case for malicious prosecution. While these classes of cases have some point in common, they are to be distinguished by certain important considerations.

False imprisonment is the direct restraint by one person of the physical liberty of another, without adequate legal justification. The essence of the wrong consists of depriving the plaintiff of his liberty without legal justification, and, hence, the good or evil intent of the defendant does not excuse or create the wrong. Malice is not an essential element of false imprisonment, and its existence is immaterial, except to increase or mitigate the damages, and even the defendant's good faith and benevolent intentions will not relieve him from liability.

Actual violence, or a threat of force or violence is not necessary to constitute the requisite restraint.

If an officer notifies a person that he is under arrest or detention, and the person so notified, believing that the officer is acting within his authority, submits and accompanies him under his orders and directions, it is imprisonment in contemplation of law.

Under the undisputed testimony in this case, I advise you that the defendant did in effect arrest the plaintiff and cause him to be delivered to the police officers of the city. He was directly instrumental in having the plaintiff imprisoned, and unless such arrest and imprisonment were justifiable, he must be held to be responsible for such injury and detriment to the plaintiff as were the natural consequences of his acts in that respect.

I further advise you that the facts shown in defense or explanation of the imprisonment of the plaintiff are insufficient, [56] in law, to warrant you in finding that it was justifiable. To explain: Organized government has regard for both the welfare of society as a whole and for liberty of the individual citizen. In protecting society against crime, necessarily, mistakes are sometimes made, and the liberty of innocent individual citizens is temporarily infringed, but the law seeks to reduce such possibility and the hardship entailed thereby to a minimum, and to that end certain rules are laid down for the guidance of public officers which they cannot with impunity over-step. Generally speaking, an officer is to make an arrest only upon a warrant issued, upon a sworn complaint, by a duly constituted court. There are, however, excep-

tions. An officer, clothed with arresting authority, such as the sheriff, or deputy sheriff, United States marshal, or some of his deputies, may make an arrest without warrant, where there is probable cause and he reasonably believes that the person arrested has committed a felony. But in misdemeanor cases, unless the offense is committed in his presence, he acts wrongfully and without authority of law if he arrests without a warrant. Furthermore, to mitigate the hardship of arrest, whether with or without a warrant, the law further provides that the arrested person shall have the opportunity to communicate with friends, and to have the advice of counsel, and also to have an opportunity to give bail, and to have a hearing without unreasonable delay. Particularly is this true in the case of an arrest without warrant; the rule is that the person arrested must, without unreasonable delay, that is, as soon as practicable under the circumstances, be brought before a magistrate and informed of the charge lodged against him.

Here, admittedly, the plaintiff had neither done nor attempted to do any wrong. He was chargeable with no unusual or suspicious conduct. If the testimony of the witnesses for the defense is to be believed, it was his misfortune to bear some resemblance to another young man, who, however, so far as the [57] evidence shows, had neither done nor attempted to do any wrong.

And he was arrested without warrant and put in jail without being informed of the charge against him or being taken before a magistrate,

or given an opportunity to explain the charge, or to furnish bail. Those are the conceded facts.

The defendant was a member of a local draft board; he was also a deputy sheriff. He states that in detaining plaintiff and turning him over to the police officers, he was acting, not as a deputy sheriff, but as a member of the board, and particularly under the direction of a Mr. Dolly, a special agent of the Department of Justice. But neither a member of a draft board nor a special agent of the Department of Justice is clothed with the general power to arrest. The precise scope of Mr. Dolly's duties does not appear, but, generally, it is the function of the special agents of the Department of Justice to gather information and to submit it to the proper officers for their consideration and use; they may or may not act upon it, and make an arrest. From the defendant's testimony, it is to be understood that he assumed that he was warranted in arresting whomsoever Dolly should direct without question. But this was a grave error. So far as appears, Dolly was without power to authorize the arrest; nor did the defendant, as a member of a draft board, have such power or authority under the circumstances shown. If Dolly had information warranting him to believe that the plaintiff was attempting to commit a crime, he should have presented it to a magistrate with a request for a warrant, or at least made it before a duly constituted arresting officer for his information.

Clearly, the arrest could not be justified upon

that ground. Neither could it be justified, if we were to disregard the defendant's testimony and assume that he acted as deputy sheriff, and not merely as a member of the draft board. [58] It was not suggested that the plaintiff was suspected of anything more than a misdemeanor; but whether of a misdemeanor or a felony, the defendant does not claim to have exercised his judgment as an arresting officer, and to have made the arrest because he had reasonable cause to believe that plaintiff was committing a crime. He very plainly states that he did not do so. He assumed to act upon Mr. Dolly's directions, without exercising his judgment or making any investigation of the facts, himself, and without question, inquiry or consideration of the evidence.

If, with the information Dolly appears to have had, the defendant, acting as deputy sheriff, had interrogated the plaintiff, and had the plaintiff declined to give any explanation, or to attempt to identify himself, then if, under all the circumstances, he, the defendant, reasonably believed the plaintiff was fraudulently attempting to get the permit, under an assumed name, he might have been justified in making the arrest without a warrant. But this, admittedly, he did not do. If he did not decline, at least he failed to make any investigation at all.

You will note that if he had been acting independently as a deputy sheriff, the means were apparently at hand by which the mistake could have been avoided. The plaintiff apparently lived here

in San Francisco, or in the vicinity, and had upon his person certain means of identification, and could, if he saw fit so to do, have given the defendant, if the latter had been willing to make an investigation, information which would have enabled him, without delay, to have determined that plaintiff was not attempting to commit a crime.

I must, therefore, advise you that whatever may have [59] been the defendant's intent, he was not justified in arresting the plaintiff or turning him over to the police officers. Your verdict, therefore, must be for the plaintiff in some amount, and the only question is how much. That question is submitted for your consideration and judgment, to be answered by you in the light of all the circumstances in evidence.

Every person who suffers detriment from the unlawful act or omission of another may recover from such person an adequate compensation in money, which is called damages. The measure of damages is the amount which will compensate the plaintiff for all the detriments proximately caused by the arrest and imprisonment. In estimating plaintiff's damage you are at liberty to consider the loss of time, if any, incurred by him as the proximate consequence of the unlawful detention, also his physical inconvenience, his anxiety and mental pain, if any, so far as the evidence disclosed is, and for the indignity, wounded pride, humiliation and mortification and you are to allow such damages as, in the opinion of the jury, would be a fair and just compensation for the injuries sus-

tained, not exceeding the amount sued for. The sense of shame and notification for which the plaintiff may recover is not necessarily limited to the actual time he was under restraint, but includes all such shame and humiliation as is the proximate result, that is, the natural consequences of the unlawful detention. No witness has placed a money standard on injured feelings, humiliation or mental suffering arising from the unlawful arrest and imprisonment, and perhaps, no witness could do so; that is left entirely to the jury; it is your province; the law has no other remedy for a wrong of this character, than to compensate, for the injury [60] done by one to another. The facts and circumstances surrounding the committing of an unlawful act are to be considered by you; you are to consider as best you can, from all the evidence, the shame, physical inconvenience, mental suffering, humiliation and mortification, if any, the plaintiff actually suffered, and you will give him compensation therefor. It is necessary that all of you concur in finding a verdict.

Mr. LEONARD.—May we note an exception to all of the instructions except the first, and also an exception to the failure to give the instruction requested by the defendant?

The COURT.—Yes. [61]

Proposed Instruction Requested by Defendant.

The following instruction was requested by the defendant, denied by the Court, and exception taken:

“If you find that the plaintiff, Rey B. Wheeler, was restrained *in his liberty* by J. B. Casserly, but that such restraint was by J. B. Casserly while acting as a regularly appointed member of Draft Board No. 1 of the City and County of San Francisco, and while regularly appointed Deputy Sheriff of said City and County, and that said J. B. Casserly, when said plaintiff, Rey B. Wheeler, was so detained, had reason to believe that said plaintiff was in the act of committing a crime, to wit, was attempting to evade the Selective Service Draft, for military service in the United States Army, and that the length of time that said plaintiff was detained was such as would be considered reasonable under the circumstances to ascertain whether or not such crime was being committed, then I instruct you that said detention was warranted, and you must find for the defendant.”

And now, therefore, the defendant presents the foregoing as his bill of exceptions in this case, and prays that the same may be settled and allowed and signed and certified by the Judge, as provided by law.

FRANK M. SILVA,

United States Attorney,

WILFORD H. TULLY,

Assistant U. S. Attorney,

E. M. LEONARD,

Assistant U. S. Attorney.

Attorneys for Defendant J. B. Casserly.

Duly settled and allowed as, defendant's bill of exceptions this September 1, 1921.

FRANK S. DIETRICH,
Judge.

[Endorsed]: Filed Sept. 6, 1921. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [62]

In the Southern Division of the United States District Court, for the Northern District of California, Second Division.

No. 16,317.

REY B. WHEELER,

Plaintiff,

vs.

J. B. CASSERLY et al.,

Defendants.

Petition for Writ of Error.

To the Honorable, the Judges of the United States District Court in and for the Northern District of California:

Now comes the above-named defendant and files this, his petition for writ of error in the above-entitled cause, and respectfully shows:

I.

That on the 17th day of June, 1921, after a trial and verdict by a jury, this Court entered judgment herein in favor of the plaintiff, and against the defendant, for the sum of seven hundred and fifty dollars (\$750) and costs.

That in said judgment, trial and verdict certain errors were committed to the prejudice of the defendant, all of which will more in detail appear from assignment of errors which defendant has filed with this petition.

WHEREFORE, defendant prays that a writ of error may issue in his behalf out of the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of the errors so complained of, and that a transcript of the [63] record, proceedings and papers in this case, duly authenticated, may be sent to said Circuit Court of Appeals for said Ninth Circuit, and that all further proceedings be suspended, stayed and superseded until the determination of said writ of error by said Circuit Court of Appeals for said Ninth Circuit.

J. B. CASSERLY,
Defendant.

FRANK M. SILVA,
United States Attorney,
E. M. LEONARD,
Assistant U. S. Attorney,
Attorneys for Defendant.

[Endorsed]: Filed Jul. 9, 1921. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [64]

In the Southern Division of the United States
District Court for the Northern District of
California, Second Division.

No. 16,317.

REY B. WHEELER,

Plaintiff,

vs.

J. B. CASSERLY et al.,

Defendants.

Assignment of Errors.

J. B. Casserly, defendant in this action, in connection with and as a part of his petition for a writ of error filed herein, makes the following assignment of errors, which he avers were committed by the Court and jury in the proceedings and judgment against this defendant appearing on the record herein, that is to say:

I.

That the Court erred in instructing the jury that their verdict must be for the plaintiff in the following language:

“I must, therefore, advise you that whatever may have been the defendant’s intent, he was not justified in arresting the plaintiff or turning him over to the police officers. Your verdict, therefore, must be for the plaintiff in some amount, and the only question is how much. That question is submitted for your considera-

tion and judgment, to be answered by you in the light of all the circumstances in evidence.”

II.

That the Court erred in instructing the jury in [65] the following language:

“Malice is not an essential element of false imprisonment, and its existence is immaterial, except to increase or mitigate the damages, and even the defendant’s good faith and benevolent intentions will not relieve him from liability.”

III.

That the Court erred in instructing the jury in the following language:

“Under the undisputed testimony in this case, I advise you that the defendant did in effect arrest the plaintiff and cause him to be delivered to the police officers of the city. He was directly instrumental in having the plaintiff imprisoned, and unless such arrest and imprisonment were justifiable, he must be held to be responsible for such injury and detriment to the plaintiff as were the natural consequences of his acts in that respect.”

IV.

That the Court erred in instructing the jury in the following language:

“I further advise you that the facts shown in defense or explanation of the imprisonment of the plaintiff are insufficient, in law, to warrant you in finding that it was justifiable.”

V.

That the Court erred in instructing the jury in the following language:

“Here, admittedly, the plaintiff had neither done nor attempted to do any wrong. He was chargeable with no unusual or suspicious conduct. If the [66] testimony of the witnesses for the defense is to be believed, it was his misfortune to bear some resemblance to another young man, who, however, so far as the evidence shows, had neither done nor attempted to do any wrong.”

VI.

That the Court erred in instructing the jury in the following language:

“And he was arrested without warrant and put in jail without being informed of the charge against him or being taken before a magistrate, or given an opportunity to explain the charge, or to furnish bail. There are the conceded facts.”

VII.

That the Court erred in instructing the jury in the following language:

“Clearly, the arrest could not be justified upon that ground. Neither could it be justified, if we were to disregard the defendant’s testimony and assume that he acted as deputy sheriff, and not merely as a member of the draft board.”

VIII.

That the Court erred in instructing the jury in the following language:

“You will note that if he had been acting independently as a deputy sheriff, the means were apparently at hand by which the mistake could have been avoided. The plaintiff apparently lived here in San Francisco, or in the vicinity, and had upon his person certain means of identification, and could, if he saw fit so to do, have given the defendant, if the latter had been willing [67] to make an investigation, information which would have enabled him, without delay, to have determined that plaintiff was not attempting to commit a crime.”

IX.

That the Court erred in instructing the jury in the following language:

“No witness has placed a money standard on injured feelings, humiliation or mental suffering arising from the unlawful arrest and imprisonment, and, perhaps, no witness could do so; that is left entirely to the jury.”

X.

That the Court erred in taking away from the jury the determination of questions of fact.

XI.

That the Court erred in refusing to give the following instruction:

“If you find that the plaintiff, Rey B. Wheeler, was restrained *in* his liberty by J. B.

Casserly, but that such restraint was by J. B. Casserly while acting as a regularly appointed member of Draft Board No. 1 of the City and County of San Francisco, and while regularly appointed Deputy Sheriff of said City and County, and that said J. B. Casserly, when said plaintiff, Rey B. Wheeler, was so detained, had reason to believe that said plaintiff was in the act of committing a crime, to wit, was attempting to evade the Selective Service Draft, for military service in the United States Army, and that the length of time that said plaintiff was detained was such as would be considered reasonable under the circumstances to ascertain [68] whether or not such crime was being committed, then I instruct you that said detention was warranted, and you must find for the defendant.”

XII.

That the Court erred in sustaining the plaintiff's objection to the following testimony:

“Mr. LEONARD.—Q. Now, Mr. Dolly, with reference to matters at that time, was this the ordinary and customary procedure in such cases?

Mr. DEVOTO.—I think we will have to make the special objection. I object to that question on the ground it is immaterial, irrelevant and incompetent and not binding on the plaintiff.

The COURT.—Sustained.

Mr. LEONARD.—Exception.”

XIII.

That the Court erred in overruling the defendant's objection to the following testimony and evidence:

“Mr. DEVOTO.—I introduce these in evidence, and ask that they be marked ‘Plaintiff’s Exhibit 2.’

Mr. LEONARD.—They are objected to as immaterial, irrelevant and incompetent; they are not connected with the case, not within the the issues, and in no way connected with it.

The COURT.—Overruled.

Mr. LEONARD.—Exception.

XIV.

That the Court erred in overruling the defendant's objection to the following testimony and evidence:

“Mr. DEVOTO.—Q. You had a watch with you at the time, did you not?

A. I had, and a gold knife. [69]

Q. Would those things identify you?

A. They would assist in identification; my knife had my initials engraved on it.

Q. Your knife had your initials engraved on it?

A. Yes, on the handle of the knife; I had that identical knife with me at the time I was detained by Mr. Casserly.

Mr. DEVOTO.—I offer this knife in evidence and ask that it be marked ‘Plaintiff’s Exhibit 3.’

Mr. LEONARD.—Objected to on the same grounds.

The COURT.—Overruled.

Mr. LEONARD.—Exception.”

XV.

That the Court erred in denying defendant's motion for a new trial.

WHEREFORE, this defendant prays that the said judgment be reversed and the verdict set aside.

FRANK M. SILVA,
United States Attorney,
E. M. LEONARD,
Assistant U. S. Atty.,
Attorneys for Defendant.

[Endorsed]: Filed July 9, 1921. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [70]

In the Southern Division of the United States
District Court for the Northern District of
California, Second Division.

No. 16,317.

REY B. WHEELER,

Plaintiff,

vs.

J. B. CASSERLY et al.,

Defendants.

Order Allowing Writ of Error.

On this 9th day of July, 1921, came defendant, J.

B. Casserly, by and through Frank M. Silva, United States Attorney in and for the Northern District of California, herein represented by E. M. Leonard, Assistant United States Attorney, and filed herein and presented his petition praying for the allowance of a writ of error in the above-entitled action to the United States Circuit Court of Appeals for the Ninth Circuit, and it appearing to the Court that said petition should be granted and a transcript of the record and proceedings in the above-entitled case, upon the judgment herein rendered, duly authenticated, together with the original assignment of errors, writ of error and citation, should be sent to the United States Circuit Court of Appeals for the Ninth Circuit as prayed, in order that such proceedings may be had as may be just to correct any manifest errors:

NOW, THEREFORE, IT IS ORDERED that a writ of error be and the same is hereby allowed herein, and that the said writ of error issue out of and under the seal of [71] the above-entitled court to the clerk thereof; that plaintiff in error furnish a supersedeas bond in the sum of one thousand five hundred dollars (\$1,500); that a true copy of the record, proceedings and papers upon which the judgment herein was rendered, together with the assignment of errors, writ of error and citation, duly authenticated according to law, shall be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, in order that said Court may inspect the same and take such action thereon as it deems proper according to law and justice.

Dated this 9th day of July, 1921.

WM. W. MORROW,

Judge.

[Endorsed]: Filed Jul. 9, 1921. W. B. Maling,
Clerk. J. A. Schaertzer, Deputy Clerk. [72]

(Bond on Appeal to U. S. Circuit Court of Appeals.)

KNOW ALL MEN BY THESE PRESENTS:

That we, J. B. Casserly, as principal, and Cecelia C. Casserly and Margaret Casserly, as sureties, are held and firmly bound unto Rey B. Wheeler in the full and just sum of One Thousand Five Hundred (1,500) Dollars, to be paid to the said Rey B. Wheeler, his certain attorney, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 9th day of July, in the year of our Lord one thousand nine hundred and twenty-one.

WHEREAS, lately at a District Court of the United States for the Northern District of California in a suit depending in said court, between Rey B. Wheeler and J. B. Casserly, a judgment was rendered against the said J. B. Casserly and the said J. B. Casserly having obtained from said Court a writ of error to reverse the judgment in the afore-said suit, and a citation directed to the said Rey B. Wheeler citing and admonishing him to be and appear at a United States Circuit Court of Appeals

for the Ninth Circuit, to be holden at San Francisco, in the State of California.

NOW, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that if the said J. B. Casserly, defendant and plaintiff in error, shall prosecute his writ of error to effect, and answer all damages and costs if he fails to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

JOHN B. CASSERLY. (Seal)

CECELIA C. CASSERLY. (Seal)

MARGARET CASSERLY. (Seal)

Acknowledged before me the day and year first above written.

[Seal]

FRANCIS KRULL,
United States Commissioner, Northern District of
California. [73]

United States of America,
Northern District of California,—ss.

Cecelia C. Casserly and Margaret Casserly, being duly sworn, each for himself, deposes and says, that *he* is a freeholder in said District, and is worth *to* sum of fifteen hundred Dollars, exclusive of property exempt from execution, and over and above all debts and liabilities.

CECELIA C. CASSERLY. (Seal)

MARGARET CASSERLY. (Seal)

Subscribed and sworn to before me this 9th day of July A. D. 1921.

[Seal] FRANCIS KRULL,
United States Commissioner, Northern District of California.

[Endorsed]: Filed July 9, 1921. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [74]

(Title of Court and Cause.)

Receipt.

Receipt of a copy is hereby admitted of the following papers in the above-entitled case this 9th day of July, 1921:

Writ of error; order allowing writ of error; petition for writ of error; assignment of errors; praecipe for record on writ of error; citation on writ of error and bond on appeal.

DEVOTO, RICHARDSON & DEVOTO.

[Endorsed]: Filed Jul. 9, 1921. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [75]

(Title of Court and Cause.)

Order for Withdrawal of Exhibits.

IT IS HEREBY ORDERED that the exhibits in the above-entitled cause may be withdrawn upon giving clerk receipt therefor.

WM. C. VAN FLEET,
United States District Judge.

[Endorsed]: Filed Sep. 12, 1921. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [76]

(Title of Court and Cause.)

Praeceptum for Record on Writ of Error.

To the Clerk of Said Court:

Sir: Please prepare record on writ of error and include therein the followning papers:

Complaint.

Answer.

Verdict and judgment.

Bill of exceptions.

Order transmitting original exhibits to C. C. A.

Stipulation relative to the settlement of bill of exceptions, etc.

Assignment of errors.

Petition for writ of error.

Order allowing writ of error.

Writ of error.

Bond.

Citation on writ of error.

FRANK M. SILVA,
United States Attorney.

E. M. LEONARD,
Assistant U. S. Attorney,
Attorneys for Plaintiff in Error.

[Endorsed]: Filed Jul. 9, 1921. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [77]

In the Southern Division of the United States
District Court, in and for the Northern District
of California, Second Division.

No. 16,317.

REY B. WHEELER,

Plaintiff,

vs.

J. B. CASSERLY,

Defendant.

**Certificate of Clerk U. S. District Court to Transcript
of Record.**

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify the foregoing seventy-seven (77) pages, numbered from 1 to 77, inclusive, to be full, true and correct copies of the record and proceedings as enumerated in the praecipe for record on writ of error, as the same remain on file and of record in the above-entitled cause, in the office of the clerk of said Court, and that the same constitute the return to the annexed writ of error.

I further certify that the cost of the foregoing return to writ of error is \$46.05, that said amount will be charged by me in my quarterly account against the United States, for the quarter ending September 30, 1921, and that the original writ of error and citation issued in said cause are hereto annexed.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said Court, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned, at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the Court.

[Seal]

WALTER B. MALING,
Clerk United States District Court for the Northern
District of California. [80]

Citation on Writ of Error.

UNITED STATES OF AMERICA,—ss.

The President of the United States, to Rey B. Wheeler, Plaintiff Above Named and Defendant in Error, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the clerk's office of the United States District Court for the Northern District of California, Second Division, wherein J. B. Casserly is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned,

should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable W. W. MORROW,
United States Circuit Judge for the Ninth Circuit,
this 9th day of July, A. D. 1921.

WM. W. MORROW,
United States Circuit Judge. [81]

[Endorsed]: No. 16,317. United States District Court for the Northern District of California, Second Division. J. B. Casserly, Plaintiff in Error, vs. Rey B. Wheeler, Defendant in Error. Citation on Writ of Error. Filed Jul. 9, 1921. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

[Endorsed]: No. 3772. United States Circuit Court of Appeals for the Ninth Circuit. J. B. Casserly, Plaintiff in Error, vs. Rey B. Wheeler, Defendant in Error. Transcript of Record. Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, Second Division.

Filed September 15, 1921.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

In the United States Circuit Court of Appeals in
and for the Ninth Circuit.

REY B. WHEELER,

Plaintiff and Defendant in Error,

vs.

J. B. CASSERLY,

Defendant and Plaintiff in Error.

**Order Extending Time to and Including September
1, 1921, to File Record and Docket Cause.**

Upon good cause being shown therefor upon the application of E. M. Leonard, Assistant United States Attorney, as one of the attorneys for defendant J. B. Casserly, it is hereby ordered that the plaintiff in error herein be granted an extension of time to and including September 1st, 1921, within which to docket said cause and file the record thereof with the clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

Dated at San Francisco, this 8th day of August, 1921.

WM. H. HUNT,

United States Circuit Judge.

[Endorsed]: No. 3772. In the United States Circuit Court of Appeals in and for the Ninth Circuit. Rey B. Wheeler, Plaintiff and Defendant in Error, vs. J. B. Casserly, Defendant and Plaintiff in Error. Order Extending Time to and Including September 1st to File Record and Docket Cause. Filed Aug. 9, 1921. F. D. Monckton, Clerk. Re-filed Sep. 15, 1921. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals in
and for the Ninth Circuit.

No. 16,317.

REY B. WHEELER,

Plaintiff and Defendant in Error,

vs.

J. B. CASSERLY,

Defendant and Plaintiff in Error,

**Order Extending Time to and Including September
26, 1921, to File Record and Docket Cause.**

Upon good cause being shown therefor, upon the application of E. M. Leonard, Assistant United States Attorney, as one of the attorneys for defendant, J. B. Casserly, it is hereby ordered that the plaintiff in error herein be granted an extension of time to and including September 26, 1921, within which to docket said cause and file the record thereof with the clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

Dated at San Francisco, this 1st day of September, 1921.

WM. H. HUNT,

United States Circuit Judge.

[Endorsed]: No. 3772. In the United States Circuit Court of Appeals in and for the Ninth Circuit. Rey B. Wheeler, Plaintiff and Defendant in Error, vs. J. B. Casserly, Defendant and Plaintiff in Error. Order Extending Time to and Including September 26th to File Record and Docket Cause. Filed Sep. 1, 1921. F. D. Monckton, Clerk. Refined Sep. 15, 1921. F. D. Monckton, Clerk.

